OUTLINES OF CENTRAL GOVERNMENT

INCLUDING THE

JUDICIAL SYSTEM OF ENGLAND

BY

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TO

THE MEMORY OF

THOSE WHO DIED

IN THE GREAT WAR

THAT WE MIGHT LIVE

" It is rather for us to be here dedicated to the great task remaining before us ; that from these honoured dead we take increased devotion to that cause for which they gave the last full measure of devotion ; that we here highly resolve that these dead shall not have died in vain ; that this nation, under God, shall have a new birthright of freedom ; and that government of the people, by the people, and for the people, shall not perish from the earth."

—ABRAHAM LINCOLN *at Gettysburg,*
19*th November,* 1863.

PREFACE TO EIGHTH EDITION

THE demand for the Eighth Edition has made it possible to incorporate the legislation of the last Parliamentary Session of the late King George the Fifth and the First Session of the reign of King Edward the Eighth.

The increasing perplexity of the Representation of Minorities in democratic States has prompted an enlargement of the pages relating to this subject which is one of considerable interest to students in all parts of the world.

In the belief that the Report and Draft Bill on Income Tax Codification has not been dealt with in sufficient detail in other works, special attention has been given to the subject in this edition and it is felt that this contribution will satisfy a want which has been expressed in many quarters.

The passing of the Government of India Act, 1935, has necessitated the re-writing of the chapter on India. This chapter still retains the historical background, appreciated by readers of previous editions, since it enables the new Act to be the more readily appreciated.

From the termination of the Great War there has been a series of International Conferences, some of which have been productive of good results, while many have not. In the maze and confusion which has resulted, it is difficult to appreciate the significance of each succeeding Conference and its relation to its predecessors. It is believed that some record of these would be valued and a new chapter entitled *International Conferences and Agreements* has been added.

I desire, again, to record my great appreciation of the never-ending kindness of the friends whose names are recorded in the Preface to the Fifth Edition and who have co-operated in the production of this Edition.

JOHN J. CLARKE.

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AND
31 DALE STREET, LIVERPOOL, 2.
September, 1936.

PREFACE TO FIFTH EDITION

THE first edition of this work was compiled from notes of lectures delivered originally to students attending classes in Citizenship under the auspices of the Liverpool Education Committee.

During the Great War many of the addresses were repeated in various parts of the country to sailors, soldiers, airmen, munition

workers, and to students at Week-end and Summer Schools. Many of these opportunities were granted through the magnificent educational work of the British and Canadian Y.M.C.A.

It was afterwards my privilege to repeat the lectures to students of Public Administration studying for the Degree in Commerce and to discharged officers and men of the British, Colonial, and Associated forces who were taking the special course in Commerce in the University of Liverpool.

The changes which have occurred in public administration during the last few years—changes of importance and magnitude—have necessitated the re-writing of the text and the inclusion of much additional matter since the appearance of the first edition in 1919. It has also been possible to take advantage of numerous suggestions received from friends in the administrative services and from students. In particular, I am much indebted to my friends, Professor H. J. Laski, M.A., and the Right Hon. Dr. H. B. Lees-Smith, M.A., M P., of the London School of Economics.

The Parliamentary Session of 1931 has been productive of a number of measures affecting the various subjects dealt with in these pages, while many of the Royal Commissions appointed by the Government have issued their Reports, which are summarized as far as space will permit in the respective chapters.

The establishment of the Diploma of Public Administration by the University of London, and the attention which this subject is receiving in the provincial Universities, would appear to suggest an increasing need for a work of this character. Within the limits of a work of this kind, it may now be said to cover the syllabus of the *British Constitution* (supplemented by Outlines of Local Government) and of the *Elements of English Law* as required by the University of London, and the *Public Administration* paper of the Institute of National Insurance, the Incorporated Association of Rating and Valuation Officers, the Chartered Insurance Institute, and the National Association of Local Government Officers.

While many have contributed assistance in the preparation of the text for the Press, I would especially mention my friends, Mr. H. T. Graham, Secretary for Publications in this University; Mr. H. L. Hobday, of the staff of the London County Council; Mr. W. J. Parry, A.I M.T.A., of the Statistical Department of the Liverpool City Treasurer, and Mr. F. Dawson, who has again provided the Index.

JOHN J. CLARKE.

THE UNIVERSITY OF LIVERPOOL
AND
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CONTENTS

CHAP.		PAGE
	Preface	vii
	SECTION I	
	SOCIAL AND POLITICAL THEORY	
I.	Development of the State	1
II.	Types of States	9
III.	Constitution of States	14
IV.	Functions of Government	19
V.	Administrative Law	22
	SECTION II	
	THE BRITISH CONSTITUTION	
VI.	Parliament	29
VII.	The Crown	32
VIII.	The House of Lords	36
IX.	The House of Commons	42
X.	Parliamentary Franchise and Elections	45
	SECTION III	
	THE MACHINERY OF GOVERNMENT	
XI.	Parliamentary Procedure	54
XII.	The Process of Legislation	58
XIII.	Principles of Legislation	67
XIV.	The Privy Council, The Ministry, The Cabinet, The Prime Minister, and the Civil Service	71
	SECTION IV	
	INTERNAL DEVELOPMENT	
XV.	The Home Office; The Scottish Office and Northern Ireland	81
XVI.	The Ministry of Health	91
XVII.	The Board of Education	97
XVIII.	The Ministry of Labour	102
XIX.	The Ministry of Pensions	111
	SECTION V	
	THE DEVELOPMENT OF NATIONAL RESOURCES	
XX.	The Board of Trade	114
XXI.	The Ministry of Agriculture and Fisheries	122
XXII.	The Ministry of Transport	128
XXIII.	The Postal Services	139
XXIV.	Miscellaneous Departments	146

SECTION VI
THE ADMINISTRATION OF JUSTICE

CHAP		PAGE
XXV.	The Judicial System	152
XXVI.	Trial Procedure and Juries	165
XXVII.	Criminal Law	177
XXVIII.	Civil Jurisdiction: (*a*) *Common Law*	188
XXIX	Civil Jurisdiction: (*b*) *Equity*	198
XXX.	The Ecclesiastical Courts: The Probate, Divorce, and Admiralty Division	208
XXXI.	Appellate Jurisdiction	214

SECTION VII
PUBLIC FINANCE

XXXII.	The Financial System	220
XXXIII.	Classification of Public Finance	235
XXXIV.	Financial Administration	240
XXXV.	The Methods of Raising the Necessary Revenue	246
XXXVI	The Control of National Finance	255
XXXVII.	National Indebtedness	265
XXXVIII.	International Indebtedness	271

SECTION VIII
IMPERIAL AND FOREIGN RELATIONS

XXXIX.	The Dominions and Colonies	280
XL.	The Irish Free State	288
XLI.	India	293
XLII.	The Foreign Office	303
XLIII.	National Defence	307
XLIV.	International Law	312
XLV.	The League of Nations	318
XLVI.	International Conferences and Agreements	326
XLVII.	Conclusion	337
	Bibliography	339
	Index	361

OUTLINES OF CENTRAL GOVERNMENT

SECTION I
SOCIAL AND POLITICAL THEORY

CHAPTER I
THE DEVELOPMENT OF THE STATE

ALL governmental organization is attributable to the fact that man is a gregarious animal. From early groups of families, tribes, and races, all inspired by common aims, have grown, by a slow process of evolution, the nations of to-day. The same process should tend to merge Nationalism into Internationalism, and this should operate as a potent influence in the cause of universal peace.

A CITIZEN is a member of a nation, state, or city. The term *Citizen* is derived from the Latin *Civis* from which comes also the word *City*.

"You are a citizen and part of the world. . . . The duty of a citizen is in nothing to consider his own interest distinct from that of others." (*Epictetus.*)

A NATION is a body of people united by a common language, common history, common aspirations, common political and economic policy, and generally, though not necessarily, by a common descent.

"The sentiment of nationality is that feeling, or group of feelings, which makes an aggregate of men conscious of ties, not being wholly either political or religious, which unite them in a community which is either actually or potentially, a nation. National sentiment has become infected by National vanity, which, disregarding the sentiment of others, thinks only of itself." *Viscount Bryce.*

A STATE is an independently organized political body. It is the organization that gives effect to sovereignty, whether such sovereignty derive from a king, a dictator or a democracy. It claims exclusive control over a clearly defined area, or territory, and owes allegiance to a common government, which is concerned with the general, as contrasted with specific or particular, interests of its members.

"For all the purposes of International Law a State may be defined to be a people permanently occupying a fixed territory, bound together by common laws, habits, and customs into one body politic, exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making peace and war and of entering into international relations with other communities." (*Phillimore.*)

POLITICS (from the Greek *politēs*) means: In its ideal sense—the art of government; the relations which exist between the governors and the governed; in practice, matters arising out of the contest of parties for power. In the former sense, every citizen should be a politician.

Politics is history in the making. It is really inseparable from *Ethics*. Ethics may be said to be the Science of the Good; and, when a statesman has discovered what he believes to be the "Good," it is through the medium of Politics that he attempts to secure that the "Good" shall accrue to the people he serves. The real end of politics is not to decide certain particular questions (which are only means to an end), but, as Plato might have said, to make the citizens better than they are—to produce good men.

"PARTY is a body of men united for promoting, by their joint endeavours, the national interest, upon some particular principle, in which they are agreed." (*Burke.*)

A party gathers round a leader and its aims are public.

Classification of Social Sciences

SOCIAL is derived from *socius*, which means an ally, friend, or companion; and Social is defined as "living in companies—not practising the solitary life—concerned with the mutual relations of men." The Social Services are therefore the services which a community provides for its own members, and to which the members of a community are entitled, to a greater or less degree, by reason of belonging to that community.

Social sciences are sometimes classified as follows—

(1) *Ethics*—the science of the conduct of man—what a man *ought* or *ought not* to do. It has to do with moral considerations and discusses the right standard of living and duty.

(2) *Law or Jurisprudence*—the science dealing with laws and regulations imposed by the State.

(3) *Economics or Political Economy*—the science dealing with wealth from the human standpoint—its nature, production, distribution, and consumption, and the laws which regulate and govern these.

(4) *Political Theory*—the science dealing with man in his

relation to the State. The art of government or the administration of public affairs.

(5) *Sociology*—the science of the constitution, evolution, and phenomena of human society dealing with the general principles underlying man's thoughts and actions in all ages and in every relation of life. The fundamental basis of the science is the study of social institutions.

Many sciences, especially those that are closely allied (*e.g.*, social sciences) overlap, and merge one into the other.

Social Institutions

It was very soon discovered in primitive society that men could not live together without some fundamental rules regulating their conduct and determining their relations to each other. Aristotle said, "The State was formed to make life possible." This became more essential with the progress of civilisation, and resulted in the establishment of Social Institutions.

The origin of our social institutions is uncertain. Although various theories have been propounded it is safer to rely upon the belief that the real origin of communal organization is doubtful and lost in antiquity.

No simple theory of its origin is satisfactory in all respects. It is probable that it developed because of man's gregarious nature, a characteristic which is a relic of the herd spirit found to be highly developed in primitive man and in certain classes of animals.

Society has acquired advantages and disadvantages from this legacy from the past. Among the advantages, mention may be made of the capacity to follow unitedly a recognized leader of society, and the ability to act in unison against a common enemy which is developed by confidence in the discovery that "union is strength."

Among the drawbacks can be traced the great lack of organizing power and qualities of leadership among the great multitude of its members, its dependence upon the theories of self-appointed leaders which results from the absence of self-reliance and which causes people inevitably to fall prey to the tyranny of despots and dictators whom they may be willing to follow blindly.

Stages of Development of Political Institutions

(1) THE NATURAL FAMILY. It may be quite safely accepted that the basis of original social relationships was the natural family but doubt has been expressed whether the primary basis was cognatic or agnatic relationship, i.e. matriarchal or patriarchal. Whilst there is the evidence of religious history for an established patriarchal basis, at a certain period some scientists

trace the primary headship to the mother, and there are natural characteristics such as the care and devotion of the natural mother for her offspring, which support such a theory. There is, however, no established evidence to support the theory that there was any original widespread promiscuity in human relationships to support the matriarchal theory. The importance of this feature lies in the fact that under the patriarchal system the female offspring leaves the family unit upon marriage, thus terminating the branch of the family tree at that point.

The effect of adoption, where permitted, should also be noticed and also the effect of emancipation on half-blood relationships.

The result of the patriarchal system was evidenced in the *patria potestas* recognized under Roman Law. The despotic authority of the father in domestic life may be illustrated in his rights in the following matters—

(*a*) power of life and death over his offspring;
(*b*) power to sell children into slavery;
(*c*) tutelage of his wife or wives;
(*d*) transfer of children by adoption;
(*e*) uncontrolled rights of punishment;
(*f*) his absolute rights over property of members of the family.

(2) KINDRED GROUPS. The recognition of the authority of a common father gave rise to the recognition of the authority, and in some cases the worship, of a common ancestor. This forged a tie between families which had a common ancestry and developed the unity of the clan or tribe.

(3) TRIBAL GROUPS. Whereas differences in dialect, and other minor characteristics, were bound to develop, the advantages of association would be recognized. In order to typify and cement tribal organizations some sign was usually chosen. These signs or "totems" originally had some practical, and sometimes a mysterious or superstitious, basis, but, in course of time, the significance of the totem might be lost and the totem sign become a mere symbol.

Tribal groups are frequently referred to as totem-kins. Thus developed the tribal groups bound together by certain common attributes such as

(*a*) ancestry or adoption;
(*b*) language; and
(*c*) customs.

Custom is a legal social phenomenon developed by the forces inherent in society. Such forces would develop partly by reason

and necessity and partly through suggestion and imitation Such customs would consist mainly of common traditions, common types of culture, religion, and dress. Customs would then pass to that advanced or apparently advanced stage of society where tribunals are necessary to interpret and apply customary law. Existing custom is, therefore, law—the common law. As population grew and civilization passed from an agricultural to an industrial epoch, more and more elaborate rules had to be formulated and eventually a body of laws was established and the way prepared for the next and important stage of development.

(4) THE NATION-STATE (ANCIENT). In the course of time the minor features which characterized individual tribes in the group would become submerged by, or made inferior to, the wider characteristics of the tribal groups.

Local customary laws would become subjective to the laws common to the group and in this way the qualities of nationalism developed. With this ever-increasing sense of mutual obligation and solidarity there developed also a widening freedom and consciousness of individual purpose.

(5) THE FEUDAL STATE. Because of the inbred instincts of the herd spirit, or because of a real or illusionary fear of outside foes, mankind has invariably been prone to submit to domination. The rivalries of nations have bolstered up the despotism of tyrants and encouraged the military enterprise of rulers. Nations have warred with nations and by military conquest nations have been consumed by the victorious nation and feudal states have been established by the victors. Sometimes a small but powerful nation has conquered a much larger but weaker nation and so there have been ruling dynasties of quite a different nationality than the majority of the peoples they have governed. History supplies many instances of this development, e.g. Egypt, Assyria, China, Rome, and England under William the Conqueror.

The despotic rulers of these feudal states depended upon the employment of a standing army, and the organization which maintained the state was established upon a military basis.

The fundamental difference between the nation and the state must be recognized. These terms have already been defined.

The conception of ownership in land and peoples has been responsible for differences of social status such as have been illustrated in the caste system in India and serfdom in Europe.

(6) POLITICAL STATES. Largely because of geographical peculiarities Greece produced a distinct type of political development which fostered the establishment of a number of separate units each with its high degree of political organization.

The unit was the city, independent of any other political organization but sometimes exercising a degree of domination over the area immediately surrounding the city.

Many of these Greek City States flourished between 500 and 300 B.C., The political principle underlying this form of government is well illustrated in the quotation from Cleon—"a democracy is incapable of ruling an empire." It should be observed, however, that Athens denied any claim to self-determination by her allies.

The works of the classical scholars provide abundant information on the political ideas of the Greeks. Plato in *Republic and Laws* directs attention to the economic basis which should be the foundation of good government. The ideal of justice should be maintained. Government should be in the hands of a "Commission of the Best."

Aristotle in his *Politics* lays down the principles of good government. The unit of self-government should be the municipality. "Man is by nature a political animal." The state should have a graded hierarchy—free citizens, freemen, slaves. Plato places the proportion of the last at one-fifth of the population. The underlying principle should be ethical—"The state was created for the sake of good life." The basis though religious and moral would be intolerant of any rival beliefs. The Christian conception of a New Jerusalem is closely allied to this idea and St. Augustine's writing "On the City of God" illustrates the underlying principles.

(7) THE UNIVERSAL STATE. From about the fourth century B.C. to the close of the Middle Ages a belief grew in the possibility of the establishment, either by consent or conquest, of a world-wide empire. In the secular sphere, Ceasar and Alexander attempted to found such an empire. With the acceptance of Christianity belief in such an empire built upon a religious basis was manifested. The Holy Roman Empire founded by Charlemange in A.D. 800, was based upon this idea in theory but not in fact. In theory, it was raised above all other monarchies as the papacy stood above all bishoprics; in reality it was simply annexed to the German monarchy.

From this time developed the antagonistic theories as to the relative importance or the proper supremacy of the religious or secular state. Dante in *On Monarchy* (A.D. 1300) defends the supremacy of the Church over secular matters. Ricolo Machiavelli in *The Prince* (1520), championed the supremacy of the secular state in religious as well as secular matters. He believed in the separation of Church and State but with the omnipotent power resting in the secular state. His name is inseparably linked

with his doctrine that in order to preserve the safety of the state the methods employed cannot be called into question—the end justifies the means.

(8) THE MODERN STATE. The ideal of the universal state proved to be a conception rather than a fact. The march of time and the development of new economic and political influences have broken up and dispersed the motives and principles of the feudal state and opened the way for the rise of democracy and the establishment of the modern political state. The Industrial Revolution and the French Revolution both contributed their quota to the surge of political activity which emancipated the common people and made possible the passing of Reform Acts and the "government of the people, by the people, for the people."

(9) EMPIRE FEDERATION. The growing recognition of the illusion of a state supported by military domination against the wishes of subjects has encouraged the idea of empire federation and the substitution of a British Commonwealth of Nations for the dominance of the Empire by the Parliament at Westminster. The principle of a free union of free peoples was contained in the Statute of Westminster, 1931.

(10) A FUTURE WORLD STATE. The formation of the League of Nations in 1918 and its subsequent development revived the idea of the possibility of a new world-state based upon the principle of federation rather than conquest or compulsion. The obstacles to the ideal are colossal, but so have been the difficulties in the way of many of the movements for human emancipation and, as they have been removed and the dream of yesterday brought to pass, so may it be possible for humanity to free itself from the slavery of armaments and warfare both military and economic.

(11) MODERN DICTATORSHIPS. Post-war conditions have proved favourable for the propagation of the cult of dictatorship. Both from the left and the right the principles which were thought to have become inseparable from our modern concept of government have been renounced. The principle of popular representation has not only been challenged but denounced and destroyed. Lenin, Mussolini, and Hitler have set themselves up as the arbiters of the destiny of their peoples. The totalitarian state brooks no criticism and gives no quarter to opposition.

Undoubtedly the unnatural economic post-war conditions in their countries have favoured the establishment and continuance of autocratic government and will continue to make it possible

for the dictator to maintain his authority. The return of conditions which will make possible greater freedom in economic relationships will prove whether, at the same time, the return to freedom in political relationships can be denied. Fortunately for Great Britain there has been no desire on the part of any of the three great political parties to depart from the principle of representation which is the soul of free government so dear to the people of this country.

"The state is not itself an end, but merely the means to the end which is realized only in the enrichment of human lives. Its power and the allegiance it can win depend always upon what it achieves for that enrichment."—*H. J. Laski.*

CHAPTER II

TYPES OF STATES

THERE are two apparent distinctions between state and government—

(1) That in the state resides the power derived from the general body of citizens, and that the government organization remains subject to this power ; and

(2) That the government is a functional body in all its parts, whilst the state, untrammelled by definite functions, must remain elastic and mobile, in spirit and organization, that it may the more readily respond to and interpret the citizens' will.

CLASSIFICATION. There are three main types of states, viz.—

I. *Unitary.* II. *Federal.* III. *Confederated.*

I. UNITARY. A Unitary State is one composed of a community which is national in character, and which maintains independence, *e.g* , Greece.

"Unitarianism means the concentration of the strength of the state in the hands of one visible sovereign power, be that power Parliament or Czar." (*Dicey.*)

II. FEDERAL. From a Sanscrit word meaning "to unite." Where a number of states, hitherto independent of each other, though perhaps dependent on a higher power, desire union but not unity, by yielding up *all* their powers, *e.g.*, the United States of America.

A *Federal Constitution* must possess—

(1) A written supreme constitution to prevent disputes.

(2) A distribution of the different powers of government between the central and the provincial governments.

(3) A supreme court charged with the duty of interpreting the intentions of the constitution and enforcing obedience to it.

"Federalism means the distribution of the forces of the state among a number of co-ordinate bodies each originating in and controlled by the constitution. (*Dicey.*)

III. CONFEDERATED. Confederation is where two or more sovereign states join together and delegate, either permanently or for a limited time, *certain* of their powers only to a central authority, for the common good, but without in any way merging their identity, reserving all other sovereign rights to themselves ; *e.g* , the North German Confederation of 1866.

Forms of Government

GOVERNMENT is that person or determinate body of persons authorized to direct, regulate, and control public and private affairs. It may be direct or representative.

"For forms of Government let fools contest;
Whate'er is best administered is best." (*Lowell.*)

POWER OF GOVERNMENT is limited by—

(1) The habit of obedience as regards past acts; and

(2) The disposition to obedience in the future.

SOVEREIGNTY is a question of fact, not of right.

"It implies that the power of which it is used neither submits legally to the interference of any other power, nor allows its own subjects to question its omnipotence." (*Grotius.*)

Sovereign power, like sovereignty, is a pure matter of fact and depends entirely upon the extent of obedience actually rendered.

Limitation of Sovereignty. No government can have unlimited power. There is always a point beyond which the individual will simply refuse obedience and prefer rebellion, anarchy, or even death.

Law and Government are distinct from other social institutions in this, that they use compulsion. They claim the obedience of all who are subject to them and the right to compel that obedience by force.

Classification of Government

(1) *Autocracy* or *Despotism* in which the sovereign power is wielded by one person only.

(2) *Aristocracy* means literally the rule of the best, in brain or mind. (*Aristos*: best; *kratos*: strength or power.)

(3) *Oligarchy* means government by a small exclusive class.

(4) *Timocracy* means that form of government in which the possession of a certain amount of property is a necessary qualification for the holding of office.

(5) *Democracy* (*Demos*: people; *kratos*: strength or power) is a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to represent the great bulk of the inhabitants, say, roughly, at least three-fourths. (*Viscount Bryce.*)

The fundamental principle of democracy is conceived in two ways—

(i) That government should rest on the active consent of the majority of the governed.

(ii) That an honest and self-supporting citizen is as well qualified as any other for the work of government.

(6) *Tyranny* means government by one who utilizes his position to satisfy personal ambition.

The historical cycle is complete, as only subtle differences divide the tyrant from the autocrat.

(7) *Anarchy* in its ideal sense is "a state of society in which men may live together in harmony without laws." Literally it means no government, or the absence or insufficiency of government. It has for its aim the abolition of all forms of government and of authority of every kind. It is based on the absolute freedom of the individual, every man being a law unto himself.

Modern Conceptions of Government

Dictatorships—

The Russian Dictatorship: The Soviet Imperialism.
Fascism: The nature of the Italian Dictatorship.
The Magyar Oligarchy: The Yugoslav Dictatorship.
The Polish Dictatorship: The German Dictatorship.

Recent Reaction against Communism and Syndicalism.

(1) *Communism.* "Communism has become, in our own day, at once an ideal and a method. As an ideal, it aims at a society in which classes have been abolished as a result of the common ownership of the means of production and distribution. As a method, it believes that its ideal can be attained only by means of a social revolution in which the dictatorship of the proletariat is the effective instrument of change." (*H. J. Laski.*)

(2) *Bolshevism.* "In the parliamentary system the actual work of the State is done behind the scenes, and is carried out by the departments, the chancellories, and the staffs; Parliament itself is given up to talk for the special purpose of fooling the 'common people.' In place of this incessant quadrille, there will be representative institutions indeed, but institutions in which the members of the legislative assemblies are themselves submitted to the armed vanguard of all the exploited and labouring masses." (*N. Leñin* in *The State and Revolution.*)

(3) *Fascism* has for its object the setting up of an executive authority which should be truly national. This change has involved on the one hand a lowering of the status of Parliament from sovereignty to collaboration, and on the other a reform of the electoral system the essence of which is that, since the mass of men follow their leaders but have themselves no capacity for choosing the right man, those leaders must be selected for them by higher authority and submitted for approval or rejection. On these principles there has been created a State whose own sovereignty is pre-eminent in theory and practice over that of elected assemblies and even of electing citizens. (*Signor Rucco* in *What is Fascism and Why.*)

Theories of Government

Governments are not the product of social theories but of the expediency or necessity of the time.

Writers have, from time to time, written down the Theories of Government according to the principles of their time. Among others are included—

1576. Bodin, *On the Commonwealth.*
Government a covenant between King and People.
Advocated constitutional monarchy as productive of greater good of each citizen.

1651. Hobbes, *Leviathan.*
The necessary absoluteness of government: State a great monster composed of society: Sovereignty created for common weal, and is unlimited and irrevocable: King *owns* power—people consent thereto.
Divine right of kings: Unity and individuality of sovereignty.

1690. Locke, *Treatise on Civil Government.*
Sovereignty of the people: Theory of the Whig tradition.
Trustee conception of political power: King does not own power but holds in trust for people.
People may revoke contract with King.

1748. Montesquieu, *On the Spirit of Laws.*
Denied contract theory: Government a development.
Division of powers: Legislative, Executive, Judicial.

1762. Rousseau, *On the Social Contract.*
Follows Locke: The theorist of absolute democracy.
Ultimate object of contract is to obtain freedom.

1776. Bentham, *Fragment of Government.*
Utilitarian theory: Government should aim at "The greatest happiness of the greatest number." In the hands of evolutionary utilitarians it has become "The welfare of society."

1821. Saint-Simon, *The Industrial System.*
Advocate of Communism: Distrust of State sovereignty.
Federation of small communities for purpose of central government.

1859. John Stuart Mill, *On Liberty.*
Follows Bentham.

1867. Karl Marx, *Das Kapital.*
Doctrine of the "Class struggle." The Socialistic State.
Walter Bagehot, *The English Constitution.*
The Cabinet—the Monarchy: A standard outline.

1919. Ulianoff, *The State and Revolution.*
Bolshevic Communism.

Conclusions

"Self-Government means government in which every section of society has its voice, in which all the members of the community are practically participant in the resultant action. A fully representative government must maintain the main characteristics of complete government. There should be no want felt by any sufficient section of the community which was not also felt by some one within the representative assembly capable of expressing the same want." (*Lord Courtney.*)

"The best of all governments is that which teaches us to govern ourselves." (*Goethe.*)

"The state was formed that men might live, but exists that they may live nobly." (*Aristotle.*)

CHAPTER III

CONSTITUTION OF STATES

THE CONSTITUTION consists of a system of fundamental rules or principles to which the sovereign or head of the state is subject in the government of the state or country. "The Constitution is that which fixes the structure of supreme government." (*Austin.*)

Constitution. The term is used in two ways—

1. The *Document* according to Austin.
2. The *form* of Government—written or implied.

Constitutions are either (I) rigid ; or (II) flexible.

All rigid constitutions are written, but all written constitutions are not necessarily rigid. It depends upon the ease with which the constitution can be altered by the legislature.

I. RIGID CONSTITUTION is one under which certain laws, generally known as constitutional or fundamental laws, cannot be changed in the same manner as ordinary laws, *e g.*, as in the United States of America or Switzerland.

"Under a rigid constitution, the term 'constitutional,' as applied to a law, means that a particular enactment belongs to the articles of the constitution, and cannot be legally changed with the same ease or in the same manner as ordinary laws." (*Dicey.*)

The extent or degree of rigidity depends on the difficulty which is experienced in altering such constitutions. In France the change can be made by both houses; in Norway and Sweden after a General Election ; in Switzerland by referendum. In any case, the ordinary legislature is unable to act—so that Parliamentary sovereignty, as we understand it, does not exist. Moreover, all rigid constitutions are embodied in a written document or documents.

In Italy the Constitution (*Statuto*) is written, but it can be altered by the ordinary legislature.

Advantages—

1. Prevents rash and hasty legislation.
2. Secures time for deliberation.
3. Maintains stability.
4. Judicial interpretation of constitution and a separation of powers, *e.g.*, United States of America.

II. FLEXIBLE CONSTITUTION is one under which every law, can

be legally changed with the same ease and in the same manner by one and the same body. The British Constitution is the outstanding example of such a constitution.

This does not imply that a flexible constitution must be unwritten. As already stated, the difference between rigid and flexible constitutions is the ease of change. The British Constitution is flexible, but it is not entirely unwritten, *e.g.*, Parliament Act, 1911.

Advantages—

1. Easily reformed.
2. Responsive to public opinion and changed conditions.
3. Less susceptible to the spirit of revolution.

Flexible constitutions have been described as relics of antiquity in which the citizen's fundamental rights are scantily defined.

Constitutional Law

"Constitutional law is that body of rules which relates to the exercise and distribution of sovereign power in a State." (*Dicey.*)

"With us laws are called 'constitutional' because they refer to subjects supposed to affect the fundamental institutions of the state, and not because they are legally more sacred or difficult to change than other laws." (*Dicey.*)

Principles of the British Constitution

"The English Constitution is a body of rules determining the balance between the authority of the State and the liberty of the subject." (*Lord Willoughby de Broke.*)

Principles of the Constitution are the result of judicial decisions *re* private rights. In giving these decisions the point at issue was not the freedom of one particular person, but the freedom and liberty of all.

The chief characteristics of the British Constitution are—

1. The legislative sovereignty of Parliament—*i.e.*, that Parliament has the right to make or unmake any law whatsoever, and further that no person or body is recognized by the law of England as having a right to override the legislation of Parliament.
2. The rule of law—*i.e.*, that there is no arbitrary power on the part of the Government, but that every man is subject to the ordinary law administered by the ordinary courts, and that, therefore, the Constitution is the result of the ordinary law of the land.
3. The dependency of the conventions upon the law of the Constitution—*i.e.*, that the conventions are so bound up in the law of the Constitution that a breach of them must almost invariably give rise to a breach of law.
4. Its flexibility—*i.e.*, that every law of every description can

be legally changed with the same ease and in the same manner by one and the same body (subject to the provisions of the Parliament Act, 1911, which, however, in this respect makes little practical difference in the position).

THE SOVEREIGNTY OF PARLIAMENT—

"The sovereignty of Parliament is (from a legal point of view) the dominant characteristic of our political institutions." (*Dicey.*)

Parliament (*i.e.*, the King, Lords, and Commons) can alter, annul, or pass any law. There is no distinction made between constitutional and non-constitutional laws. No Court of Law can declare a law void because it is non-constitutional, as can be done under a rigid constitution.

Although there are no constitutional laws, there are certain Acts and Agreements which relate to the constitution and are tacitly understood to be irrevocable. (*See* Limitations on the Power of Parliament, page 30.) These include—

1. Treaties or Quasi-Treaties, *e.g.*, Acts of Union (Scotland), 1707 and (Ireland) 1800. (But see page 30.)
2. Solemn Agreements, *e.g.*, Bill of Rights, 1689.
3. Statutes, *e.g.*, Act of Settlement, 1701; Statute of Westminster, 1931.
4. Common Law, which is the customary or traditional law of the country

"England is not governed by logic; she is governed by Parliament." (*Disraeli.*)

"One main reason why constitutional laws have not, in England, been recognized under that name, and in many cases have not been reduced to the form of a statutory enactment, is that one law, whatever its importance, can be passed and changed by exactly the same method as every other law." (*Dicey.*)

THE RULE OF LAW—

The Rule of Law is the goal of all forms of law, but the Rule is hidden in the maze. Mr. C. K. Allen, in *Law in the Making*, thinks that "our jurisprudence needs to be supplemented by a body of administrative law which will ensure the proper distribution of governmental powers, and at the same time readjust the legal relations between the individual and the Government."

(*a*) No one can be lawfully restrained or punished except for breach of law established before the Courts in ordinary legal manner.

(*b*) Each House of Parliament can commit for contempt, etc.

(*c*) All are equal in the eye of the law. There are exceptions, *e.g.*, judges and certain officials acting in their official capacity.

THE LEADING FEATURES OF THE BRITISH SYSTEM ARE—

1. Limited Constitutional Monarchy.
2. Flexible constitution.
3. Popular representation, and an extensive franchise.
4. A bicameral legislature.
5. A cabinet or consolidated ministry.
6. Legislative control of the Executive.

Conventions of the British Constitution

1. That the Sovereign is not responsible: "The King can do no wrong."
2. That for every act of the King's prerogative his ministers are responsible to Parliament.
3. That it is the right of Parliament, and its duty to the country, to inquire into the mode of exercise of the royal prerogative, to review the advice given by ministers with respect to its exercise, and to approve or condemn that advice as they may think fit.
4. That the Crown does not exercise the prerogative to veto Bills passed by both Houses of Parliament.
5. That there is no authority in the Crown to dispense with obligations of the law.
6. That the Cabinet must resign after an adverse vote in the House of Commons on an important measure; or vote of no confidence.
7. That Money Bills must originate in the House of Commons.
8. That Parliament must meet each year.
9. That only Law Lords take part in Judicial Proceedings in the House of Lords.

These conventions usually rest ultimately on actual law, *e.g.*, if the Cabinet acts in a manner of which Parliament disapproves, and, after an adverse vote, refuses to resign, then Parliament can refuse to pass the necessary "Votes" of money, and taxation becomes illegal. It could also refuse to pass the Army and Air Force (Annual) Act, so that any attempt to enforce the collection of taxes would be impossible. The Judges could not refuse to be guided by statute while Parliament alone can dismiss them once they are appointed.

Important Constitutional Laws

1. *Magna Charta*, 1215.
 (*a*) Regular Meetings of Great Council.
 (*b*) No taxation without consent.
 (*c*) Right of trial before punishment.

2. *Bill of Rights*, 1689.
 (*a*) Dispensing with and suspension of laws illegal.
 (*b*) Right of petition to the Crown.
 (*c*) The maintenance of a standing army in time of peace, without the consent of Parliament, illegal.
3. *Act of Settlement*, 1701.
 (*a*) Protestant Settlement of Succession.
 (*b*) Judges protected from arbitrary removal.
 (*c*) Royal Pardon not to prevent impeachments.
4. *Parliament Act*, 1911.
 See page 41.
5. *Statute of Westminster*, 1931.
 See page 282.

The Right of Personal Liberty

The right of personal liberty is the right not to be arrested or detained or otherwise subjected to physical restraint except in accordance with the law.

The law affords three remedies by means of which this right of personal liberty may be vindicated, viz.—

1. By writ of *habeas corpus*;
2. By action of damages for false imprisonment, and
3. By a prosecution of the person imposing the illegal restraint —that is a prosecution for assault.

(See Chapter XXVI.)

The Right of Freedom of Speech

"Our law permits anyone to say, write, and publish what he pleases; but if he make a bad use of this liberty he must be punished. If he unjustly attack an individual, the person defamed may sue for damages. . . ." (*Odgers.*)

"The right of freedom of speech is the right which everyone has to say, write, or publish, what he pleases so long as he does not commit a breach of the law." (*Lord Hewart.*)

"Our business is to secure such a balance between the liberty we need and the authority that is essential as to leave the average man with the clear sense that he has elbow-room for the continuous expression of his personality." (*Professor H. J. Laski.*)

CHAPTER IV

FUNCTIONS OF GOVERNMENT

BEFORE the middle of the nineteenth century the main functions of government in England were those of defence and police. The State Departments were few in number and the management of the life of the people was not regarded as a function of government.

Functions of government change with the growth of civilization, but may be divided into two classes, viz.—

I. OBLIGATORY, *i.e.*, those which are essential to the welfare of the state. "The inalienable right of man to life, liberty, and the pursuit of happiness." (*American Declaration of Independence.*) The business of the government is to serve as the guardian of the state.

II. OPTIONAL, *i.e.*, those which, although not necessary, tend to conduce to a better system of government and a better condition of society.

I. OBLIGATORY FUNCTIONS—

(1) *Legislative.* The business of laying down, formally and openly, express general rules for the guidance of conduct and the prevention of breaches of right, accompanied by a precise statement of penalties or sanctions which will follow any breach of its provisions, *e.g.*, Public Health Acts.

(2) *Administrative.* The exercise of discretionary powers conferred by legislation, more especially

(*a*) The power of expending money for—
- (i) Defence against invasion ;
- (ii) Preservation of peace at home ;
- (iii) Prevention and punishment of crime ;
- (iv) Protection of subjects abroad.

(*b*) Taxation, which is the appropriation of private wealth exacted compulsorily, from individuals by the State to meet the expenditure necessary to carry out the functions of government.

It is the duty of the administration to maintain order, prevent and punish violence, and to secure, as far as it possibly can, the community at large against the stoppage of supplies and the

suspension of services which are necessary for the maintenance of its social life.

(iii) *Executive.* The enforcement, through officials who are not allowed much discretion, of the provisions of imperative law, as in—

(*a*) Sanitation ;
(*b*) Education ;
(*c*) Public assistance;
(*d*) Factory legislation.

In general, these functions are discharged by local authorities subordinate to the central government.

In recent years there has been such an extension of the government machine in the economic and municipal life of the nation that it is now extremely difficult to know where the executive ends and the administrative begins.

(iv) *Judicial.* The business of deciding whether the general provisions of the law apply to particular cases, interpretation of law, punishment of crime, etc.

II. Optional Functions—

(i) *Provision of Institutions of General Public Utility* such as,

(*a*) Currency ;
(*b*) Weights and Measures ;
(*c*) Postal services ;
(*d*) Registration of births, deaths, and marriages ;
(*e*) Meteorological reports ;
(*f*) Ordnance surveys ;
(*g*) Construction and maintenance of roads, railways, and other means of communication, *e.g.*, canals ;
(*h*) Census of population and census of production.

(ii) *Promotion of Social and Individual Welfare, e.g.,* by legislation for—

(*a*) Unemployment Schemes;
(*b*) Pensions: Widows and Old Age;
(*c*) Employment Exchanges ;
(*d*) National Insurance ;
(*e*) Trade Boards;
(*f*) Workmen's Compensation.

Principles Affecting the Functions of Government

"The proper limits of government interference are relative to the nature of each particular state and the stage of its civilization." (*Toynbee.*)

The limits of public action are entirely determined by expediency. Certain guiding principles may be stated, *e.g.*,

(1) Public action should not stifle private enterprise.

(2) The State should not enter upon undertakings of a speculative character.

(3) Projects should not benefit one class at the expense of another.

(4) Proofs of their benefit should be demonstrated.

(5) All undertakings should be open to observation and criticism, including their financial arrangements.

(6) Public action should not impair future resources.

"It is in the power of Government to prevent much evil; it can do very little positive good in this or perhaps in anything else." (*Burke.*)

CHAPTER V

ADMINISTRATIVE LAW

AUSTIN divides the province of Public Law into: (*a*) Constitutional Law and (*b*) Administrative Law. "Administrative Law determines the ends and modes to and in which the sovereign power shall be exercised directly by the monarch or sovereign, or shall be exercised directly by the subordinate political superiors to whom portions of these powers are delegated or committed in trust."

The subject of Administrative Law has received considerable attention during and subsequently to the Great War. Writers of distinction have dealt with the subject and in recent times the work of Professor Port, *Administrative Law*; Dr. W. A. Robson, *Justice and Administrative Law*; and Lord Hewart, *The New Despotism*, may be referred to by the student desirous of pursuing the subject.

THE FRENCH SYSTEM. In France and in most other continental countries a system of administrative law exists. It is known in France as *droit administratif*. It is a system which is fundamentally opposed to the English conception of the "Rule of Law," especially as regards exception from jurisdiction of the ordinary legal tribunal, in the case of public officials acting in performance or purported performance of their official duties.

In countries where this system of administrative law prevails, the rights and obligations of all servants of the State, and also of all private individuals in relation to servants of the State acting in their official capacity, as well as the procedure for enforcing those rights and obligations, are governed by special rules which are, in general, administered by special tribunals, and the principles underlying these rules differ essentially from the principles forming the basis of the law which governs the relations of private individuals towards one another.

Under this system, the ordinary courts of justice are regarded as having no jurisdiction to deal with any dispute affecting the Government or its servants, all such disputes being within the exclusive cognizance of administrative courts, the chief of which, in France, is

The Conseil d'État which was originally a purely administrative body. Though its composition has varied at different periods of French history, and it has gradually become more judicial in character, the members have always held office at the pleasure of the Government of the day.

Where, in the course of a case in an ordinary Judicial Court, it appears that a question of administrative law is involved, the Court is bound to refer the matter to the Council of State for decision. Where it is doubtful whether a question of administrative law is or is not involved, a conflict of jurisdiction arises.

Until 1872 it was for the Council of State itself to determine all such questions of jurisdiction, the Council thus having, in effect, the power to fix the limits of its own jurisdiction. By a law of 1872 a Conflict-Court was established to decide questions of conflict of jurisdiction as between the administrative and judicial Courts.

In France, a public official is not answerable in any Court for what is regarded as an Act of State, however unjustifiable his conduct may have been according to the ordinary law of the land. Agents of the Government are exempted from punishment for any act of interference with the liberty or rights of citizens, if the act was done in obedience to the orders of a superior. On the other hand, damage may be recovered from the State itself, through the Council of State, for unlawful acts of agents of the Government.

In this system the late Professor A. V. Dicey noticed three characteristics: first, that the rights of the State are determined by special rules not applicable to private individuals; second, that the courts of law are without jurisdiction in matters concerning the State, and governmental litigation is tried by administrative courts; and third, that a special protection is afforded to officials in respect of wrongful acts committed by them in the course of their official duties.

DEVELOPMENT IN THIS COUNTRY. One of the most striking developments in the British Constitution during the past half-century has been the acquisition of judicial power by the great departments of State and by various other bodies and persons outside the courts of law. These tribunals are not only unconnected with the courts of law, but are also for the most part outside their control. In many instances the judicature is specifically prohibited by statute from reviewing their decisions or from supervising their activities in any way.

This remarkable movement betokens the existence in the Constitution of Great Britain of a definite body of Administrative Law, or Executive Justice as it is sometimes called, and discloses a breakaway from that Rule of Law which Dicey regarded as an essential feature of the English constitutional system.

In 1915, Dicey himself was forced to confess that the "Rule of Law" in England was not quite what it had been. In reality, during the last fifty years there has been a vast expansion of State and municipal activities which affect whole classes of people rather than individuals.

It has received little attention, either from Dicey or his followers, and for the most part, until quite recently, has been passed by unnoticed save for a word here and there in works devoted to other subjects or a protest directed against some particular example. Yet it is obviously a matter of very considerable importance in the government of this country. There is still, it is true, nothing comparable to the system of *droit administratif* which obtains in France and elsewhere; but that need not blind us to the fact that there exists in England a definite and extensive body of administrative law or executive justice which, in its own sphere, is no less significant.

There can be no doubt that the rise of Administrative Law is mainly due to the vast extension in the work of government which has taken place in England during the past few decades, and to the rapid increase in power of the executive which has accompanied that extension. The traditional court system, in which isolated individuals contest disputed rights of property or person, has been superseded by an entirely new type of judicial process so far as concerns controversies arising in connection with the great new social services undertaken by the State. Executive justice, far from being a temporary and accidental intrusion into the mellowed sanctity of the British Constitution, is inherently connected with modern social evolution and is a feature of the governmental order likely to grow extensively during the present century.

The system, which had been to some extent in existence for a number of years before, received a great impetus during the War, when it became necessary to create a number of Administrative Tribunals upon whose decision the liberty of the subject depended. The system was continued and developed after the War in numerous Acts of Parliament which entrusted the determination of important cases to various Ministers of State.

As civilization advances and society becomes more complex, the State begins to control the lives and destinies of its members. Disputes between individuals no longer concern only the individuals themselves. The relations between them may affect the health and even the liberty of others of their fellow countrymen. Instances occur in such matters as conditions of employment regulated by Factory, Trade Boards and Local Government Acts, or, again, in Public Health, Town and Country Planning, and Small Holdings Acts.

Dr. Port advocates as to Administrative Tribunals—

(*a*) Uniform system of evidence and procedure with restriction on exercise of prerogative.

(*b*) Appeals on all questions of law.

(*c*) Institution of Administrative Court of Appeal.

(*d*) Publicity of hearing and publication of decisions.

(*e*) All formal Tribunals to come under the Lord Chancellor and not under the relevant Government departments.

(*f*) Annual report by Lord Chancellor on the whole system of Administrative Jurisdiction.

CLASSIFICATION. It is desirable to distinguish clearly between delegated functions which are legislative in their nature and those which are judicial. (Lord Sankey recently remarked that two classes of case arose where the State itself became a party. "There are cases," he said, "under the general law and its regulations dealt with in the public Courts before the justices, and there are also cases where the modern tendency has been to make the department both judge and prosecutor to the exclusion not only of the right, except in very limited circumstances, to appeal to the public Courts, but also to the exclusion of those rights of being heard and of hearing what is said against one which we have come to regard as the heritage of every Englishman.')

BY-LAWS. Under the heading of delegated functions which are legislative may be considered such instances as the by-laws of local authorities. These have statutory force, though they are, of course, subject to the limit of the statutory power under which they are made. Provided that power is not exceeded, their force is equivalent to a statutory enactment over the area to which they apply.

As a practical illustration, one may mention that the Council of a borough may make by-laws for the good rule and government of the borough and for the prevention of nuisances in pursuance of Section 249 of the Local Government Act, 1933, and the following is an example of a by-law so made—

> *Noisy Hawking.* No person shall, for the purpose of hawking, selling, distributing, or advertising any article, shout or use a bell, gong, or other noisy instrument in any street or public place so as to cause annoyance to the inhabitants of the neighbourhood.

Such a by-law must be made at a meeting of the Council at which not less than two-thirds of the whole number of the Council are present. Sealed copies must be sent to His Majesty's Principal Secretary of State for the Home Department, and if His Majesty in Council does not within forty days disallow the by-law it comes into force. It is also necessary to give public notice of the Council's intention to put the proposed by-law into force, and this is usually done by providing a copy in the Town Hall and by advertising in the local Press. During the period mentioned, representations and objections against the coming into force of the by-law may be addressed to the Home Secretary.

There is a penalty section under which any person offending against the by-law shall be liable to a penalty not exceeding £5 with, usually, a continuing penalty of not exceeding £2 per day. But legal proceedings must be taken to recover a penalty for breach of a by-law. It will be clear, therefore, that local authorities are not able to act arbitrarily in the making of by-laws; and the process of enforcement is judicial.

JUDICIAL FUNCTIONS. Delegated functions which are judicial seem to be more closely related to the question of administrative law so-called It has reference to functions which appear to be of a judicial nature, but which are not determinable in the Courts but are reserved for determination by a Secretary of State or some other person. It is to the exercise of such functions that exception has been taken, and Lord Hewart's book deals principally with this aspect of the matter. In this he refers to "a marked and increasing development of bureaucratic pretensions, the essence and aim of which are to withdraw more and more matters and topics from the jurisdiction of the Courts and to set them apart for purely official determination."

Powers of Ministers

In October, 1929, a committee was appointed by the Lord Chancellor under the chairmanship of the Earl of Donoughmore, K.P., to "consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (*a*) delegated legislation, and (*b*) judicial or quasi-judicial decisions, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law."

In May, 1931, the Right Hon. Sir Leslie Scott, K.C., was appointed chairman. The Report, which was issued in June, 1932, was unanimous, but Professor H. J. Laski and Miss Ellen Wilkinson added notes modifying in some respects the attitude of the Committee as a whole.

The following are points from the Report—

I. DELEGATED LEGISLATION—

1. Simplification of nomenclature.
2. Powers should be clearly defined.
3. "Henry VIII Clause" should be exceptional.

This clause had its origin from the Statute of Proclamations giving Henry VIII powers to make Proclamations having the force of law.

At the present time it confers power on a Minister to modify the provisions of Acts of Parliament (*e.g.*, Section 130 of the Local Government Act, 1929). It should be abandoned in all but the most

exceptional cases, and should be exercised only upon special grounds stated in the Ministerial Memorandum attached to the Bill.

4. Limits on the "Clause" if used.

The "Henry VIII Clause" should

(*a*) Never be used except for the sole purpose of bringing an Act into operation;

(*b*) Be subject to a time limit of (say) one year from the passing of the Act.

5. Exclusion of the jurisdiction of the Courts should be exceptional.

6. Limits on such exclusion.

7. The right and duty of the Courts.

Except where immunity from challenge is intentionally conferred, there should not be anything in the language of the statute even to suggest a doubt as to the right and duty of the Court of Law to decide in any particular case whether the Minister has acted within the limits of his power.

8. The Rules Publication Act, 1893, should be amended.

9. General applicability of new Act.

10. Consultation with those concerned.

11. Explanation of new Regulations.

12. Standardization of procedure for laying before Parliament.

13. Explanatory memorandum with delegating Bills.

14. Proposed Standing Committee of each House.

Standing Orders of both Houses should require that a small Standing Committee should be set up in each House of Parliament at the beginning of each session for the purpose of—

(*a*) Considering and reporting on every Bill containing a proposal to confer law-making power on a Minister;

(*b*) Considering and reporting on every regulation and rule made in the exercise of delegated legislative power, and laid before the House in pursuance of statutory requirement.

15. Drafting of delegated legislation.

It is stated that the above recommendations are intended to apply to such bodies as the Electricity Commissioners, who are appointed by the Minister of Transport with the concurrence of the Board of Trade, and carry their powers into effect under the Minister's directions.

II. JUDICIAL DECISIONS.

The Committee, in dealing with the principle of the Rule, recommended the following safeguards—

(*a*) (i) The maintenance of the jurisdiction of the High Court to review and, if necessary, to quash the proceedings on the

ground that the Minister or the Ministerial Tribunal has exceeded the statutory powers;

(ii) The existence of a simple procedure for the purpose;

(*b*) The vigilant observance by the Minister or the Tribunal of the principles of natural justice;

(*c*) In every case in which a statutory public inquiry is held, the publication of the report of the person holding the inquiry, subject only to the reservation that there may be exceptional cases, where on special grounds the Minister may hold that publication would be against the public interest;

(*d*) (i) The right of any party aggrieved by a judicial decision to appeal to the High Court on any question of law within a short stated time; and

(ii) The existence of a simple procedure for the exercise of such right.

Limitations of the Powers of Ministers

The decision of the House of Lords in *The King* v. *The Ministry of Health, ex parte Yaffe* (1931), A.C. 494, determined the limitation of the powers of Ministers. It was then laid down by the Law Lords that a Minister's power to make an Order which shall have effect as if enacted in the Act, is substantially limited. In the case cited it was held that while the provision by the Minister made the Order speak as if its sanction were contained in the Act, the Act was the immediate source of the power exercised in the making of the Order. Therefore, since the Order, as made, was in conflict with the Act, the Minister's Order must give way to the Act itself.

In certain statutes, however, the Small Holdings and Allotments Act, 1908, and the Housing Act, 1925, for example, a more elaborate device is contained, apparently, for giving unlimited authority to the Minister to prevent reference to the Courts. This type of provision has not yet been considered by the House of Lords.

SECTION II

THE BRITISH CONSTITUTION

CHAPTER VI

PARLIAMENT

THE word *"Parliament"* is derived from the French *Parler*, to speak, and means "the King, the House of Lords, and the House of Commons, aptly described as the King in Parliament, and these three bodies acting together constitute Parliament." (*Blackstone.*) The word "Parliament" is said to have been first used of the assembly summoned by Louis VII of France in 1146. In 1930 Iceland celebrated the thousandth birthday of her Althing, the oldest Parliament. Parliament is often referred to as the Three Estates of the Realm, but it is more accurate to state that the Three Estates of the Realm, together with the King, constitute the High Court of Parliament. The Three Estates of the Realm are strictly the peers spiritual, peers temporal, and commons. The Crown itself is not an Estate of the Realm.

Functions of Parliament

The functions of Parliament may be said to be—

1. To watch and criticize the daily conduct of the administration in the execution of existing laws.
2. To make new laws: that is to say, to lay down new principles to be carried out by the local or central administration.

The supreme function of Parliament is that of making the statutes whereby the powers of all other bodies are defined, and of laying down the laws which have to be executed by those bodies

3. To provide, by taxation, the means for carrying on the work of government.

Power of Parliament

"The power and jurisdiction of Parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds." (*Sir Edward Coke.*)

"The principle of Parliamentary sovereignty means neither more nor less than this, viz., that Parliament, thus defined, has, under the English constitution, the right to make or unmake any

law whatever, and that no person or body is recognized by the law of England as having a right to set aside the legislation of Parliament." (*Dicey.*)

The power is absolute by reason of the absence of any competing legislative power.

EXAMPLES OF THE POWER OF PARLIAMENT—

1. Fixes occupation of the Throne, *e.g.*, Act of Settlement, 1701; Regency Act, 1810.
2. Acts of Union: (1) Scotland, 1707; (2) Ireland, 1800.
3. Regulates its own sittings: Septennial Act, 1716, amending the Triennial Act, 1694; Parliament Act, 1911, amending Septennial Act, 1716.
4. Interferes with private rights, *e.g.*, right of entry on private land for public purposes.
5. Interferes with public rights, *e.g.*, granting rights and privileges; or imposing duties or liabilities, *e.g*, local authorities.
6. Supreme control of taxation. The rule that Parliament should meet once a year is not actually laid down by statute, but if this did not occur it would be impossible to obtain lawfully the necessary funds to carry on the administrative work of the country.
7. Power over its own proceedings and members.
8. Can pass Acts of Indemnity.
9. No judge or court can refuse to enforce an Act of Parliament.

LIMITATIONS ON THE POWER OF PARLIAMENT

The legal limitations on the legislative assembly of Parliament are—

1. Acts of Parliament are invalid if contrary to the Laws of Nature or the doctrine of international law.
2. Reservation to the Crown of certain powers, *e.g.*,
 (*a*) Making treaties;
 Both the Treaty of Peace, 1919, and the Anglo-French Treaty, 1919, however, established a new principle whereby Parliament is given the right to assert control over foreign policy.
 (*b*) Declaring war;
 (*c*) Making peace.

These are not, in practice, exercised except after consultation with the Government.

3. One Parliament makes a law which it is implied cannot be touched by any subsequent Parliament, *e.g.*, Acts of Union with Scotland and Ireland, and constitutions of colonies.

Against this may be quoted the Irish Church Act, 1869, and the Home Rule Bills, 1885 and 1893, the Irish Councils Bill, 1897,

the Government of Ireland Act, 1920, and the Irish Free State (Agreement) Act, 1922, all of which proposed to interfere or have interfered with the principles of the Act of Union, 1800.

History of Parliament

Consideration of space has prevented any reference to the History of Parliament. The reader is referred to any of the works on the Constitution, quoted in the Bibliography, for further details.

Houses of Parliament

The present building replaced that which was burnt down in 1834. It was designed by Sir Charles Barry who adopted the Gothic style of architecture characterized in St. Stephen's Chapel. The House of Lords was first used in 1847 and the House of Commons in 1852. Big Ben is so called after Sir Benjamin Hall who was First Commissioner of Works and Public Buildings when the bell was cast.

Corps of Custodians controlled by the Lord Great Chamberlain displaced, as from 1st January, 1933, the policemen on watch duties at the Houses of Parliament. Police officers still patrol the lobbies.

The Assembly of Parliament

The Permanent Secretary to the Lord Chancellor and Clerk of the Crown in Chancery is the official responsible. It is by virtue of the second position that the duty devolves on him of starting the proceedings for a new Parliament by issuing a writ of election to the returning officer of each constituency. He also issues writs of summons to each peer and to those bishops who are entitled to sit in the House of Lords.

CHAPTER VII

THE CROWN

THE Government of the United Kingdom is a limited hereditary monarchy, the legislative power being vested in the King, Lords, and Commons, while the executive power rests with the Crown.

The term " King " is patriarchal. The King (*cyning*) means " the child of the kin." The King is a person who constitutionally has conferred on him the Crown.

THE CROWN is the visible symbol of supreme executive power, which vests in the King, but is exercised by his Ministers, who are responsible to Parliament and to the electorate for their actions.

TENURE. The King occupies the throne under the Act of Settlement, 1701, whereby, in default of issue of Princess Anne of Denmark and H.M. William III as provided by the Bill of Rights, 1689, the Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the Princess Elizabeth, late Queen of Bohemia and daughter of James I, was to be the next in succession to the throne of England and the heirs of her body, being Protestants.

The Royal and Parliamentary Titles Act, 1927, empowered the King by Order in Council to change the style and title appertaining to the Crown. Accordingly the Royal Title was amended and is now as follows: "Edward VIII, by the Grace of God of Great Britain, Ireland, and the British Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India."

THE CORONATION of H.M. King Edward VIII has been fixed by Order in Council for 12th May, 1937, at Westminster Abbey. The Proclamation also appointed a Commission to inquire into the petitions and claims of all who by ancient right are entitled to perform services on Coronation Day. Five or more of the Commissioners were empowered to sit at Whitehall to hear petitions.

THE PREROGATIVE OF THE CROWN is " the residue of discretionary or arbitrary authority legally left in the hands of the Crown." (*Dicey.*)

The expression of the will of the Sovereign is known as the exercise of the Royal Prerogative, which " comprehends all the special dignities, privileges, powers, and royalties allowed by the common law to the Crown of England." (Halsbury: *Laws of England.*)

"These powers which the Executive exercises without Parliamentary authority are comprised under the comprehensive term of prerogative." (*Swinfen Eady*, M.R., in *Attorney-General* v. *De Keyser's Royal Hotel Ltd.* (1919), 2 Ch. 197.)

EXEMPTION OF THE CROWN FROM STATUTES. The prerogative of the Crown in regard to exemption from statutes is usually summarized by the dictum that "the King is not bound by statute unless named therein." This prerogative is defined in Bacon's "Abridgement" as follows: "Herein a general rule hath been laid down and established, viz.: that where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act, though not particularly named therein. But where a statute is general, and thereby any prerogative, right, title, or interest is divested or taken from the King, in such case the King shall not be bound unless the statute is made by express words to extend to him."

EXAMPLES OF THE ROYAL PREROGATIVE—

The Royal Prerogative may be exercised in the following manner—

1. The Sovereign can—
 (*a*) Summon, prorogue, and dissolve Parliament.
 (*b*) Make peace.
 (*c*) Conclude treaties.
 (*d*) Declare war.
 (*e*) Refuse assent to a bill; not exercised since 1707.

2. The Sovereign is—
 (*a*) The Fountain of Justice and Honour.
 (*b*) The Head of the Navy; the Army; the Air Force.
 (*c*) The Head of the State Church.
 (*d*) The titular author of all laws which are quoted by the year of his reign.
 (*e*) The nominal head of every legal institution in the British Empire.
 (*f*) The leader of society.

3. The Sovereign has the right to—
 (*a*) Be consulted by the Government.
 (*b*) Encourage his advisers.
 (*c*) Warn his ministers.
 (*d*) Mines of all precious metals; and treasure trove.
 (*e*) Require that his consent shall be obtained to marriage of members of the Royal Family.

Limitations of the Royal Prerogative are shown in the fact that the Sovereign cannot—

(*a*) Make, unmake, or suspend Acts of Parliament
(*b*) Levy or suspend taxation.
(*c*) Be, or marry, a Roman Catholic.
(*d*) Prevent impeachments.

"Since the king can do no wrong, he can do neither right nor wrong. He must not be praised or blamed, nor must his name, or personal wishes be brought into political controversy." (*Lowell.*) This does not mean that no act which the king can do can be wrong; but that if the king has done a wrong act he can neither legally nor constitutionally be held responsible for it.

THE EXPRESSION OF THE ROYAL WILL can, generally speaking, be given only in three ways, viz.—

1. *By Order in Council* made "by and with the advice of the Privy Council"; and those present bear the responsibility for what is done. The Lord President of the Council is a member of the Cabinet.

2. *By Order, Commission or Warrant* under the sign manual bearing in general the counter-signature of one or more responsible ministers.

3. *By Proclamation, Writs, Patents, Letters or other documents under the Great Seal* affixed on the responsibility of the Lord Chancellor.

PERSONAL RIGHTS OF THE CROWN include freedom from—

(*a*) Taxation, without consent;
(*b*) Action at law, except by grace;
(*c*) Distraint and arrest.

The King's Servants are also free from arrest unless sanctioned by the Board of Green Cloth over which the Lord Steward of the Royal Household presides.

MINISTERIAL RESPONSIBILITY means—

1. The legal responsibility of every minister for every act of the Crown in which he takes a part. It is a general rule—not found in the law—that the acts of the monarch must always be done through a minister, and that every order given by the Crown must, when expressed in writing, be countersigned by a minister, who will be held responsible for it.

"The King reigns but does not govern." (*Thiers.*)

The Act of 1640 abolished the Star Chamber, which was one of the earlier Courts, and produced for England a theory of

ministerial responsibility and not a system of administrative law.

(*a*) The minister or servant of the Crown who thus takes part in giving expression to the royal will is legally responsible for the act in which he is concerned.

(*b*) It is now well-established law that the Crown can act only through ministers, who thereby become legally responsible for the acts in which they take part. Behind Parliamentary responsibility lies legal responsibility, and the acts of subordinate officials are made subject to the rule of law.

(*c*) Thus the Crown acts through ministers, who are responsible to Parliament, which is in turn answerable to the electorate. This involves also the convention of the collective responsibility of the ministers.

2. The responsibility of the Minister for the work of the individual Department of which, for the time being, he is the political head.

(*a*) It is his duty to defend the work of this Department in the House of Parliament of which he is a member.

(*b*) An adverse vote in the House of Commons in this connection would probably necessitate his resignation and the fall of the Government.

CHAPTER VIII

THE HOUSE OF LORDS

THE HOUSE OF LORDS is composed of two of the Estates of the Realm, the Lords Spiritual and the Lords Temporal It is the descendant of the Norman *Magnum Concilium*, the Great Council of the King, and is of much greater antiquity than the House of Commons.

The LORDS SPIRITUAL consist of the Archbishops of Canterbury and York and twenty-four senior Bishops of the Church of England, the number not having been increased with the successive creation of new Bishoprics. The Archbishops of Canterbury and York, and the Bishops of London, Durham, and Winchester, are always entitled to sit. The other Bishops receive a writ of summons in accordance with the Bishoprics Act, 1878. It is only when the voidance of a see decreases the total number of the Lords Spiritual to less than twenty-six, that any of the remaining bishops receive a writ of summons and then in order of seniority of appointment. The Bishop of Sodor and Man is not included in this rotation, and has no seat in Parliament, being a member of the Legislative Council, or Upper Chamber, of the Isle of Man. A Bishop ceases to be a Lord of Parliament on resigning his see. He continues as a member if translated to another see.

The Bishops sit, not as overseers of the Church, but as barons of the realm. They disclaimed their liability to be tried by laymen. "The Lords Spiritual are an estate of the realm. They have an historic right to sit there; they represent a profession which is debarred from sitting in the House of Commons." (*Lansdowne.*)

The TEMPORAL LORDS may be divided into—

1. Peers whose right to sit and vote is hereditary, viz., English Peers and Peers of the United Kingdom.
2. Representative peers for Scotland.
3. Representative peers for Ireland.
4. Lords of Appeal in Ordinary.

Peeresses cannot sit in the House of Lords

1. *Hereditary Peers* are divided into—

(1) Princes of the Royal blood.
(2) Dukes.
(3) Marquises.
(4) Earls.
(5) Viscounts.
(6) Barons.

Subject to the usual disqualifications attached to infancy, persons of unsound mind, alienage, and bankruptcy, every

English peer is entitled to receive a writ of summons. The number of these peers varies. Fresh peerages are being continually created, while other peerages become extinct. An English peer is compelled to be a member of the House of Lords whether he wishes it or not, but he is not compelled to attend.

2. *Representative Peers for Scotland.* By the Act of Union, 1707, between England and Scotland, the Scottish peers (who do not possess an English or United Kingdom peerage) send sixteen representative peers to the House of Lords. They are elected immediately after every General Election, at Holyrood Palace, and sit until Parliament is dissolved. A Scottish peer might never be elected a representative peer, notwithstanding which he cannot sit for any constituency in the House of Commons.

3. *Representative Peers for Ireland.* By the Act of Union, 1800, between England and Ireland, the Irish peers elect twenty-eight representative peers for life. An Irish peer, who is not selected to represent Ireland in the House of Lords, is eligible for election for any constituency in Great Britain as a member of the House of Commons, but a Scottish peer is not eligible.

In the House of Commons on 11th April, 1923, the Prime Minister stated that "the Law Officers have advised that, in the event of a vacancy occurring (among the Irish Representative Peers for Ireland) no action to fill it can be taken without further legislative provision, but that existing representative peers retain their right to sit." In 1926, the then Prime Minister (Mr. Baldwin) said: "The question as to the status of Irish representative peers has been considered. His Majesty's Government are advised that no Irish election can take place in present circumstances."

4. *Lords of Appeal in Ordinary.* The Lords of Appeal, of whom there may not be more than seven appointed under the Appellate Jurisdiction Act, 1876, and its amendments, enjoy the dignity of a baron for life.

PROCEDURE. A peer may vote by proxy, but no proxy has been used since a standing order was agreed upon on the 31st March, 1868, prescribing that proxies shall not be called on a division except by special resolution of the House agreed to after two days' notice. As in the House of Commons, each peer must, therefore, be present to record his vote.

The Lords Spiritual and the Lords Temporal sit together, and all have an equal voice in the House, whatever may be their rank.

A peer may hold a superior Scottish or Irish title, by which he may be generally known, to that under which he sits as a peer of the United Kingdom. Thus the Duke of Buccleuch sits as Earl of Doncaster.

The quorum of the House is three, but the Standing Orders require the presence of thirty peers to make a division effectual.

Privileges of the House of Lords

COLLECTIVELY—

1. Judicial, as explained in Chapter XXV.
2. Right of expulsion of members.
3. Originating Bills affecting the peerage.
4. Determining peerage claims, when referred.
5. Commitment of members.
6. Demanding presence of its members.
7. Services of the law officers of the Crown, and of the Judges of the Supreme Court.
8. Excluding unqualified persons.

INDIVIDUALLY—

1. To have a writ of summons.
2. To enter a protest of dissent on the Journals of the House.
3. Access to the King as a peer of the realm.
4. Exempt from serving as witness (waived).
5. Exempt from serving as juror.
6. Freedom of speech.
7. Freedom from arrest. If charged with treason or felony, a peer must be tried by the House of Lords, his peers, and he cannot waive this right even although he may desire to do so.

Powers of the House of Lords

I. Judicial.

II. Legislative and Deliberative.

I. JUDICIAL—

(1) It is the highest Appellate Court of the United Kingdom.

The Appellate Court, as constituted under the Appellate Jurisdiction Act, 1876, is constituted of the Lord Chancellor and of other legal lords of high standing, such as ex-Lord Chancellors and the Lords of Appeal in Ordinary. It may sit during a parliamentary recess.

(2) It may in certain cases try members of its own body.

The Trial of Peers (Abolition of Privilege) Act, 1936, abolishes the privilege of the peerage in relation to criminal proceedings.

(3) It tries any person who may be impeached by the House of Commons. More than a century has elapsed since an impeachment took place, and it may be considered that this form of procedure, which had reference to Ministers of the Crown, is obsolete consequent upon the development of the theory of ministerial responsibility.

(4) It decides claims to the peerage.

II. LEGISLATIVE—

(1) It may originate any Bills other than Money Bills.

(2) It can refuse consent to any and every Bill with the exception of Money Bills, as provided by the Parliament Act, 1911. In no instance had the supplies of the year been refused until the Finance Bill of 1909.

(3) It can, in strict law, insist upon amending any and every Bill, even a Bill of Aid and Supply to the Crown.

The Lord Chancellor.

The LORD HIGH CHANCELLOR is appointed by the mere delivery of the Great Seal to him by the Sovereign.

His functions may be grouped as (*a*) Political and (*b*) Judicial—

(*a*) *Political*—

(1) Principal legal adviser of the Crown.

(2) By prescription, Speaker of the House of Lords, and may act in that capacity even though he is not a peer.

(3) By virtue of his office, a Privy Councillor and a member of the Cabinet.

(4) The first existing great officer of State, and takes precedence of all but Royal Dukes and the Archbishop of Canterbury.

(5) Keeper of the Great Seal. In this connection all important Government acts—treaties with foreign states, the assembly of Parliament, royal grants—must pass the Seal, and therefore pass under his review.

In the absence of the Sovereign, the Lord Chancellor reads the speech at the opening and prorogation of Parliament. If able to attend, he is always one of the Commission for giving the royal assent to Bills.

He cannot leave the United Kingdom during his occupancy of the office without putting the Seal into Commission. He receives a salary of £6,000 per annum as Judge and £4,000 per annum as Speaker of the House of Lords. On retiring from office he receives a pension of £5,000 a year, but in such cases he commonly assists the Lord Chancellor and the Lords of Appeal in Ordinary in the transaction of the judicial business of the House of Lords and the Judicial Committee of the Privy Council.

Anyone who has filled the office of Lord Chancellor may also, at the request of the Lord Chancellor, sit in the Court of Appeal, but he shall not be required to sit and act in the Court unless, upon request, he consents to do so.

(*b*) *Judicial*—

(1) President of—

(*a*) The House of Lords as an Appellate Court ;

(*b*) The Court of Appeal ;

(*c*) The Chancery Division of the High Court of Justice;
(*d*) The Judicial Committee of the Privy Council.

(2) Miscellaneous, including—

(*a*) Visitor of all hospitals of royal foundation.

(*b*) General guardian of all infants, idiots, and persons of unsound mind.

(3) Nominator of—

(*a*) Puisne Judges of High Court;
(*b*) County Court Judges;
(*c*) Justices of the Peace, except in Lancashire, where they are appointed by the Chancellor of the Duchy of Lancaster.

(4) Patron of ecclesiastical livings in the gift of the Crown.

Reform of the House of Lords

ADVANTAGES OF HOUSE OF LORDS. "You had formerly a very strong Second Chamber, backed up by the veto of the Sovereign. The veto of the Sovereign has long disappeared. Here we have nothing, absolutely nothing but the feeble barrier of the hereditary Second Chamber which it is now said ought to be entirely abolished." (*Rosebery.*)

"The need of two Chambers has been an axiom of political science based on the belief of the innate tendency of an assembly to become lazy, tyrannical, and corrupt, a tendency which can only be checked by the co-existence of another house of equal authority." (*Bryce.*)

PRINCIPLES OF A SECOND CHAMBER—

1. It should represent the various bodies of opinion existing in the nation with a fullness and a detail not possible in the other House, by including persons who do not accept the whole programme of any party.

2. It should not represent only a single class or a few classes or a single religious creed or a single economic interest.

3. It should not permanently or predominantly favour any one of the parties which alternately govern the country.

4. The members should be independent, without any fear of punishment for the expression of their opinions.

5. It should not be a mere duplication of the other House and, therefore, should differ from that Chamber in qualifications for membership or franchise.

6. It should have a fixed term of life.

"Among possible changes in the working of the Upper House two may be named: the first that of vesting the legislative functions of peers in a smaller number chosen by the main body; and the second, that of disabling from voting those who have not

attended for a prolonged period, until they recover the right by adequate attendance." (*Courtney.*)

Parliament Act, 1911

The principal provisions are—

(1) The assent of the House of Lords is not required to Money Bills subject to certain conditions.

(*a*) Money Bill is defined as "a Public Bill which, in the opinion of the Speaker of the House of Commons, contains only provisions . . . dealing with the imposition, repeal, remission, alteration, or regulation of taxation . . . or subordinate matters incidental to those subjects or any of them."

(*b*) Every Money Bill must be endorsed by the Speaker to the effect that it is a Money Bill. The Speaker's decision is made after consultation with two members of the Chairmen's Panel.

(*c*) To come under the privileges of the Act, Money Bills certified by the Speaker are to be sent to the Lords at least one month before the end of the session. If not passed within one month, they are to receive the royal assent, without the consent of the Lords.

(2) Power of House of Lords as to Public Bills (other than Money Bills) is restricted.

(*a*) A Bill rejected by the House of Lords may be introduced a second time and passed by the Commons in the next session without alteration.

(*b*) If the Lords reject such a Bill a second time, the Commons may in a third consecutive session pass it a third time without material alteration. Two years must elapse between the second reading in the first session and the date when the Bill passes the House of Commons in the third session.

(*c*) Then the Bill, three times passed in this manner by the House of Commons, may be submitted for the royal assent without having been passed by the House of Lords.

(*d*) After the King gives his formal assent, it becomes law.

(3) Speaker's Certificate is conclusive for all purposes.

(4) Enacting words of statutes are to be varied as regards Bills affected by the foregoing. The words "By and with the advice and consent of the Lords Spiritual and Temporal" are to be omitted and "in accordance with the provisions of the Parliament Act, 1911," substituted.

(5) Public Bill for this purpose does not include a Bill enforcing a Provisional Order.

(6) Five years was substituted for seven years in the Septennial Act, 1716.

(7) The provisions of the Act do not apply to a Bill to extend the duration of Parliament beyond five years.

CHAPTER IX

THE HOUSE OF COMMONS

THE House of Commons is popularly referred to as the Third Estate of the Realm. It is the Parliamentary Chamber which is elected by a Franchise which has been extended from time to time. This is dealt with in Chapter X

Election of Members

After a dissolution of Parliament a General Election must be held. A Parliamentary election means the election of a member or members to serve in Parliament for a county or division of a county, or Parliamentary borough or division of a Parliamentary borough, or for a University or combination of universities. (Interpretation Act, 1889.) Except for a by-election, the whole of the constituencies of the country are polled at the same time. By the Parliament Act, 1911, no Parliament can sit for a longer period than five years. The King has the right to dissolve Parliament whenever he chooses, but he does so only upon the advice of the Prime Minister.

Constituency means "any county, borough, or combination of places, or university or combination of universities, returning a member to serve in Parliament." (The Representation of the People Act, 1918, Sect. 41.)

QUALIFICATION OF MEMBER OF THE HOUSE OF COMMONS. A candidate must be a British subject of full age and not subject to legal disqualification, such as a sentence to penal servitude or being an undischarged bankrupt. By the Sex Disqualification (Removal) Act, 1919, women are eligible for membership of the House of Commons.

Methods of Election

Candidates are usually sponsored by one of the three recognized parties in the country, viz.: Conservative, Labour, and Liberal, but Independent candidates are sometimes nominated.

Writs for the election are issued from the Crown Office and forwarded to the Returning Officer, and a time is fixed within which all nominations must take place.

If there are more candidates nominated than there are seats, there must be a poll of the electors. This is conducted by ballot, in accordance with the Ballot Act, 1872. To prevent bribery and

corruption, the Corrupt and Illegal Practices Prevention Act, 1883, has placed stringent restrictions upon election expenses. The scale of election expenses for parliamentary candidates is contained in the Fourth Schedule of the Representation of the People Act, 1918, as amended by the Representation of the People (Equal Franchise) Act, 1928. Under the 1918 Act, provision is made whereby any elector, if he thinks that anything illegal has been done, may present a petition against the return of the candidate elected. Since 1868 petitions have been tried by two judges selected from the King's Bench Division of the High Court in England, or in Ireland for Irish cases, or by two judges of the Court of Session for Scottish cases. At the conclusion of the hearing the judges make a report to the Speaker of the result of their findings in the case, and upon this report the House of Commons will act.

Payment of Members

Members of Parliament are paid a salary of £400 per annum (£100 of which is free from income tax.). By a Supplementary Estimate in April, 1924, the House of Commons agreed to provide free first-class travel for Members of Parliament between London and their constituencies. In July, 1936, the Chancellor of the Exchequer agreed to a suggestion of the Leader of the Opposition that where necessary members should be entitled to First Class Sleeper accommodation. For the present, books of non-transferable vouchers are issued which can be exchanged for railway tickets at the booking office or at a ticket agency.

Retirement of Members

Theoretically a member cannot resign his seat, but may accept an office of profit under the Crown which necessitates the vacation of his seat and an appeal to his constituents, whereupon some other candidate takes his place. For this purpose the office of Steward and Bailiff of His Majesty's Three Chiltern Hundreds of Stoke, Desborough, and Burnham, which is a manor of Berkhampsted, in Hertfordshire, or the office of Steward and Bailiff of the Manor of Northstead or Hempholme is available. These sinecure appointments are offices of profit under the Crown, and the member, when appointed, is required to vacate his seat, when another candidate seeks election in his stead. The acceptance of the office is just a form, and the former member vacates the position immediately after the by-election. The Re-election of Ministers Act (1919) Amendment Act, 1926, which removes the necessity for the re-election of members of the House of Commons on acceptance of office, does not apply to these offices.

Constitution of the House of Commons

The following table gives particulars of the composition of the House of Commons as determined in 1885 and 1918. Under the provisions of the Irish Free State (Agreement) Act, 1922, the number of Irish representatives was reduced, and the present composition of the House is as shown in the last column of the following table.

	Number of Members.					
	1885		1918		1922	
England—						
London	59		62		62	
Boroughs	166		193		193	
Counties	231		230		230	
Universities	5		7		7	
	—	461	—	492	—	492
Wales—						
Boroughs	12		11		11	
Counties	22		24		24	
University	-		1		1	
	—	34	—	36	—	36
Scotland—						
Boroughs	31		33		33	
Counties	39		38		38	
Universities	2		3		3	
	—	72	—	74	—	74
Ireland—						
Boroughs	16		21		4	
Counties	85		80		8	
Universities	2		4		1	
	—	103	—	105	—	13(*a*)
Total seats		670		707		615

(*a*) Northern Ireland as provided by Government of Ireland Act, 1920, and the Irish Free State (Agreement) Act, 1922.

Officers of the House of Commons

The Officers of the House of Commons include the Clerk of the House; Sergeant-at-Arms; Counsel to the Speaker; Examiner of Petitions for Private Bills and Taxing Officer and Speaker's Secretary; Librarian; Chaplain to the Speaker; Accountant; and Editor of Official Reports of Debates.

CHAPTER X

PARLIAMENTARY FRANCHISE AND ELECTIONS

THE word "franchise" means a right or privilege, hence the right of voting at a parliamentary or local government election. No person can exercise the franchise unless his or her name is contained in the current register of electors.

Parliamentary Register of Electors means "a register of persons entitled to vote at any Parliamentary election." (Interpretation Act, 1889.)

The principal Reform Acts prior to 1928 were that of 1832, which enfranchised the middle classes, Disraeli's "Leap in the Dark" in 1867, which gave the vote to the burgesses in the towns, the Representation of the People Act, 1884, which enfranchised the agricultural labourer, and the Representation of the People Act, 1918, which widened the male franchise and gave the right to vote to women at 30 years.

The Liberal Government, under Mr. H. H. Asquith (the late Earl of Oxford and Asquith), introduced the Franchise and Registration Bill, 1912, for the purpose of abolishing all existing franchises and establishing two new qualifications, viz.—

(1) Six months' residence in a constituency.
(2) Six months' occupation of property,

with a system of continuous registration.

There was considerable criticism of the Bill as introduced, and the Government tabled drastic amendments which the Speaker ruled to constitute a new Bill, and the Bill was withdrawn.

In 1913, and again in 1914, a Bill to abolish plural voting passed the House of Commons, but each time it was rejected by the Lords. One effect of the Great War was to disfranchise many workers and soldiers, actually and legally. It brought many women into closer contact with the work of government.

Representation of the People Act, 1918

On 16th August, 1916, the late Mr. Walter Long, then President of the Local Government Board, suggested a conference of parties, and on 26th September the first meeting of a conference convened by Mr. Asquith was presided over by Mr. J. W. Lowther (Speaker). The conference consisted of 32 members, including three Unionist and two Liberal peers, nine Unionist, eight Liberal, three Scottish, four Irish, and three Labour members of the House of Commons.

On 27th January, 1917, a report was made to the Premier. This was embodied in thirty-seven resolutions, of which no less than thirty-three were unanimous. On 28th March, 1917, Mr. Asquith's Motion for Legislation was carried, resulting on 15th May in the first reading of the Representation of the People Bill. On 23rd May the second reading was passed. After considerable trouble with the House of Lords, principally on the question of the Alternative Vote, the third reading was taken on 7th December ; and on 6th February, 1918, the Royal Assent was given to the Bill, which became the Representation of the People Act, 1918.

The Representation of the People (Economy Provisions) Act, 1926, provided that there should be one Register of Electors prepared annually by the Registration Officer, instead of the two provided under the Representation of the People Act, 1918.

The Representation of the People (Equal Franchise) Act, 1928, was presented by the Home Secretary, Sir William Joynson-Hicks, on the 12th March, 1928, as a Bill " to assimilate the franchise for men and women in respect of parliamentary and local government elections ; and for purposes consequential thereon." It passed the Second Reading on 29th March, 1928, by 387 votes to 10, and the Third Reading without a division. The Royal Assent was given on 2nd July, 1928.

	THE PARLIAMENTARY ELECTORATE before 1832 and after each extension of the franchise was increased		No. of Voters to Adult Population
	From	To	One in
Prior to 1832 .		500,000	50
1832 . .	500,000	1,000,000	24
1867 . .	1,000,000	2,500,000	12
1884 . .	2,500,000	8,357,000	7
1918 . .	8,357,000	21,392,000	3
1928 . .	21,392,000	26,750,000	2

In comparing the foregoing figures, allowance must be made for the normal increase in the electorate due to the larger population and improved registration machinery.

RESIDENCE AND BUSINESS QUALIFICATIONS.

Section 1 of the 1928 Act provides that—

(1) A person shall be entitled to be registered as a parliamentary elector for a constituency (other than a university constituency) if he or she is of full age and not subject to any legal incapacity, and—

(*a*) has the requisite residence qualification ; or

(*b*) has the requisite business premises qualification; or
(*c*) is the husband or wife of a person entitled to be so registered in respect of a business premises qualification.

(2) A person, in order to have the requisite residence qualification or business premises qualification for a constituency must—
(*a*) on the last day of the qualifying period be
(i) residing in premises in the constituency, or
(ii) occupying business premises of £10 value in the constituency,
as the case may be; and
(*b*) during the whole of the qualifying period have resided in premises, or occupied business premises, as the case may be, in the constituency, or
(i) in another constituency within the same parliamentary borough or parliamentary county, or
(ii) within a parliamentary borough or parliamentary county contiguous to that borough or county, or
(iii) within a parliamentary borough or parliamentary county separated from that borough or county by water, not exceeding at the nearest point six miles in breadth, measured in the case of tidal water from low-water mark.

For the purposes of this sub-section, the administrative county of London is treated as a parliamentary borough.

(3) The expression " business premises " in this section means land or other premises of the yearly value of not less than ten pounds occupied for the purpose of the business, profession, or trade of the person to be registered.

UNIVERSITY CONSTITUENCIES.

Section 2 provides that a person shall be entitled to be registered as a parliamentary elector for a university constituency if he or she;
(i) is of full age and not subject to any legal incapacity, and
(ii) has received a degree (other than an honorary degree) at any university forming, or forming part of, the constituency, or
(iii) in the case of the Scottish universities is qualified under Section 27 of the Representation of the People (Scotland) Act, 1868, or
(iv) if a woman, has been admitted to and passed the final examination, and kept, under the conditions required of women by the university, the period of residence necessary for a man to obtain a degree at any university forming, or forming part of, a university constituency which did not at the time the examination was passed admit women to degrees.

NAVAL OR MILITARY VOTERS. Section 5 provides that a person to whom this section applies (in this Act referred to as " a naval

or military voter") shall be entitled to be registered as a parliamentary elector for any constituency for which he would have had the necessary qualification but for the service which brings him within the provisions of this section.

This section applies to any person who is of the age required under this Act in the case of that person and is not subject to any legal incapacity, and who—

(*a*) Is serving on full pay as a member of any of the naval, military, or air forces of the Crown; or

(*b*) Is abroad or afloat in connection with any war in which His Majesty is engaged, and is—

(i) In service of a naval or military character for which payment is made out of moneys provided by Parliament, or (where the person serving was at the commencement of his service resident in the United Kingdom) out of the public funds of any part of His Majesty's Dominions, or in service as a merchant seaman, pilot, or fisherman, including the master of a merchant ship or fishing boat and an apprentice on such a ship or boat; or

(ii) Serving in any work of the British Red Cross Society, or the Order of St. John of Jerusalem in England, or any other body with a similar object; or

(iii) Serving in any other work recognized by the Admiralty, Army Council, or Air Council, as work of national importance in connection with the War.

THE QUALIFYING PERIOD.

The "qualifying period" referred to in the Act is defined by the Representation of the People (Economy Provisions) Act, 1926, section 9, as a period of three months ending on the first day of June in each year;

Provided that in the application of this section to a person who is a naval or military voter, or who has been serving as a member of the naval, military, or air forces of the Crown at any time during the said three months and has ceased so to serve, one month shall be substituted for three months as the qualifying period.

Registration of Electors

The Registration Machinery is described in *Local Government of the United Kingdom* (Pitman).

VOTING AT ELECTIONS.

Electors may vote only twice at a General Election, although they may possess additional qualifications, and one of the votes must be in respect of "residence." Thus, an elector may possess a residence qualification, a business qualification, and a University

qualification. In the case of the last qualification, the voter is required to complete a voting paper, duly witnessed, which contains the declaration that "I also declare that I have not voted at this general election in respect of any qualification other than a residence qualification."

Representation of Minorities

In a representative system, while in the last resort the majority must rule, it is necessary that that rule should be tempered by some consideration for the views of minorities. Ever since 1832, and even before that date, voices have been raised in support of a method of election that would ensure the representation of minorities. In recent years criticism has become more insistent as a result of the contradiction between the nominally equal adult franchise and the great inequalities of electoral power arising from the working of the voting system.

When a community is small, it is a simple matter for the members of the community to elect to office by a single act of voting persons whom they choose to govern them. But as the community grows larger both the issues and the procedure of elections become more complex. Convenience requires that its representatives shall be elected by separate parts or constituencies of the whole community. At the same time, in a modern society, where there are many means available for the organization of opinion, candidates for election are regarded more and more in their function of exponents of policy. There is a struggle for party power in the elected body and the true representation of political forces becomes important. Yet under the present conditions of election there is no necessary correspondence between the number of representatives gained by a party in Parliament and the extent to which it is supported by the voters in the country.

Rateable value was taken into account originally in fixing the size of constituencies in order that commercial interests might be represented. This still prevails in municipal wards. But the question of rateable value seems now to be outside consideration in parliamentary representation, except, perhaps, for the City of London, which is, however, in a unique position in many respects. The instructions to the Boundary Commissioners who drew up the 1918 Redistribution scheme contained no reference to rateable value, the general direction being "one member for a population of 70,000." By the redistribution of 1885, the division of the country into single-member constituencies was made practically complete—a process which involved the breaking up of many of the natural communities of the country, *e.g.* the small shires and the larger boroughs. Representation which was purely qualitative

before 1832 has, in a century, become purely quantitative, and this seems to give weight to the argument in favour of an electoral method capable of measuring political forces with some degree of accuracy.

In the single-member constituency a minority, however large, cannot secure representation. Where the same party may be in a minority in many adjacent constituencies, exclusion on a large scale may result. In the general election of 1935, in the eleven counties south of the Thames, Labour was in a minority in every constituency As a result, the Labour Party, though it polled 836,000 votes in this area, did not secure a single representative in Parliament. The complete figures for the area were as follows—

SOUTHERN ENGLAND—GENERAL ELECTION, 1935

Party	Votes	Seats
Government . . .	2,068,323	77
Labour	836,573	0
Liberal	320,307	2

The result of a general election depends to a very material extent upon the manner in which political opinion is distributed over the country. In the election of 1935, the Labour Party polled 760,000 votes in the London boroughs and obtained 22 seats, whereas in the South of England, in spite of a larger poll, it obtained no seats. If the votes of the different parties had been distributed uniformly over London, Labour would not have obtained a single seat.

The result of the General Election of 1935 as a whole was as follows—

GREAT BRITAIN AND NORTHERN IRELAND
GENERAL ELECTION, 1935: CONTESTED SEATS

Party	Votes	Seats obtained	Cost in Votes per seat obtained
Government . .	11,789,575	405	29,000
Labour . . .	8,325,446	141	59,000
Liberal . . .	1,443,112	21	69,000
I.L.P. . . .	139,517	4	35,000
Others . . .	299,800	4	—
	21,997,450	575	

Each supporter of the Government exercised as much power electorally as two supporters of the Opposition. Such a result is a serious violation of the principle of equal franchise, but the

anomalies of the previous election (1931) were yet more striking. In that election each supporter of the Government represented on the average 29,000 voters, and each supporter of the Labour opposition represented on the average 144,000 voters. Five voters of one party were required to balance one voter of another.

Reform Proposals

In the proposals for the reform of the method of election, the choice would seem to lie between three alternative methods, the Second Ballot, the Alternative Vote, and Proportional Representation.

THE SECOND BALLOT. The second ballot is a system rather of the past than of the future. It has been used in a number of continental countries, but in nearly all the system has disappeared in favour of forms of proportional representation. The most important country still using the second ballot is France.

The purpose of the second ballot is not to provide representation for minorities, but to ensure that in each constituency the candidate is elected with an absolute majority of the votes. In France, in the general election of 1936, second ballots were necessary in 433 out of 618 constituencies. In these 433 constituencies, no candidate obtained an absolute majority of the votes at the first election, and a second election was held a week afterwards. Generally speaking, the candidates at the bottom of the poll stood down and there was a clear fight between the two candidates highest on the poll at the first count. The system invites the formation of election pacts between different groups. In France, the Liberals, Socialists and Communists formed a Popular Front. The Popular Front candidate who received most votes at the first ballot received the combined support of the three groups at the second ballot.

This system does not ensure fair representation, even as between the groups that enter into an electoral pact. But its most characteristic political effect is that it enables two or more parties to combine with crushing effect against another party or combination.

THE ALTERNATIVE VOTE. This is identical in principle with the second ballot, but the operations are carried through in one election. The system applies in single-member constituencies. The elector expresses his choices among the candidates by using the figures 1, 2, 3, etc. If no candidate has an absolute majority of the first choices, the lowest candidates are excluded in succession and the second choices on their papers determine, as in the second ballot, which of the leading candidates shall be elected. Again, as in the second ballot, the system enables combinations of parties to operate against a third. The result may be less representative

of the community as a whole than the result of electing the candidate highest on the poll, irrespective of the absolute majority, as under the present "first-past-the-post" system.

PROPORTIONAL REPRESENTATION. There are different forms of proportional representation, but all seek to secure fair representation for the majority and for substantial minorities. In Europe, party list systems are mostly used; in English-speaking countries the system advocated is that known as the single transferable vote system. It is already in practical use for a variety of elections both in Great Britain, in British Dominions, and in the United States of America.

The constituencies would return several members each. The old communities would, as far as possible, be restored. Thus the city of Bristol, which was a constituency for about 600 years and which at present is divided into five areas each returning one member, would, under proportional representation, be undivided and it would return, as now, five members. The city of Leeds would return six members; the city of Bradford four; the county of Hertfordshire five; the county of Oxfordshire three. Such constituencies admit of the representation of the minority as well as of the majority. There would be no increase in the total number of members of the House of Commons.

In each of these constituencies the elector would exercise a "single" vote; but if he so wishes he can make his single vote a "transferable" vote in order to ensure that it shall be used to the fullest advantage. What is the effect on representation of each elector having only one vote when there are, say, five members to be elected? Assume that 5,000 persons vote. With 5,000 voters, there will be 5,000 votes. It follows that any candidate who obtains 1,000 votes will be sure of election. Because if one candidate obtains 1,000 votes, there will be only 4,000 left for all the other candidates. Only four other candidates can obtain as many as 1,000 votes each. Any candidate, therefore, who obtains 1,000 votes out of 5,000 must win one of the five seats. In other words, one-fifth of the voters can secure one-fifth of the representation; a large minority can elect a member.

Now suppose a candidate polls 2,000 votes when 1,000 are sufficient for election. The candidate has enough votes to elect two. In such a situation the special advantages of making the vote transferable become apparent; the 2,000 electors are enabled by this means to secure their fair share of the representation.

The elector records his vote by putting the figure 1 against the name of the candidate he most desires to see elected. The vote will be given to that candidate. The elector can, in addition, put the figure 2 against his second choice, the figure 3 against his third choice, and so on. When an elector's first choice receives more

votes than are sufficient for election, the excess votes are not wasted. The returning officer transfers them in accordance with the preferences expressed by the electors. If a candidate has been marked as the next choice on one-third of the papers of the elected candidate, he receives one-third of the surplus. If some other candidate is the next choice on one-fourth of the papers, he receives one-fourth of the surplus, and so on. In this way, the returning officer, acting always in strict accordance with official regulations, gives effect to the wishes of the electors. The 2,000 voters, sufficient to elect two, exercise their due share of influence, but not more than their due share.

A candidate who has few votes remains in the running until there are no longer any surplus votes to be transferred from other candidates If he is then at the bottom of the poll, he is declared defeated, but his votes are not wasted, as is the case to-day. Each vote is made available for the voter's next choice. The candidates at the bottom of the poll are declared defeated, one at a time, in succession, and their votes are transferred until there remain, say, in a five-member area, five candidates each supported by approximately the same number of electors Representation is not monopolized by any one party; all electors feel that they have some share in the representation; each party elects its best.

This system is in operation for University constituencies in Great Britain returning two or more members to the House of Commons; for the National Assembly of the Church of England; for parliamentary and local elections in the Irish Free State; for certain legislative elections in South Africa, Australia, Canada, Malta, and India. In the United States some important municipalities elect their councils by this system.

Other forms of proportional representation are in use for parliamentary, and generally also for local, elections in Belgium, Czechoslovakia, Denmark, Finland, Holland, Iceland, Japan, Norway, Sweden, and Switzerland.

SECTION III

THE MACHINERY OF GOVERNMENT

CHAPTER XI

PARLIAMENTARY PROCEDURE

THE main lines of Parliamentary procedure were settled during the seventeenth century.

The procedure differs according to whether it is—

(1) A NEW PARLIAMENT when it includes—
- (*a*) Election of Speaker;
- (*b*) Oath or Affirmation by Members;
- (*c*) Signing Roll of Parliament.

(2) EVERY SESSION when it includes—
- (*a*) State Opening;
- (*b*) King's Speech;
- (*c*) Daily routine.

THE STATE OPENING OF PARLIAMENT takes place on the occasion of the first assembly of a new Parliament or at the opening of a Parliamentary session.

THE KING'S SPEECH, which is usually read in person by His Majesty from the Throne in the House of Lords at the opening of each session of Parliament, is prepared by the Cabinet. In the absence of the King, the Speech is read by the Lord Chancellor.

THE SPEAKER is the Chairman of the House of Commons. He is a Member of the House, sworn of the Privy Council. He is paid a salary of £5,000 a year and is provided with a house within parliamentary precincts. The Election of the Speaker is the first business of the House of Commons of a new Parliament.

(*a*) At the appointed hour the Sergeant-at-Arms enters, bearing the mace, which he places *under* the table. The Clerk to the House temporarily fills the office of Speaker by pointing to those members who are called upon to speak. The Prime Minister is first called upon, and he acquaints the House that the King has given them permission to proceed in the election of a new Speaker.

(*b*) A supporter of the member about to be nominated is then pointed to by the Clerk, and this member then rises to propose the election of his candidate. This motion is then seconded by

another supporter. In the event of no further proposals, the member is duly elected. In case of a contest the member securing the largest number of votes is declared elected. Until recently a contest was of frequent occurrence.

(*c*) The Speaker-Elect sits, conveniently for approach, at the end of the second bench on the Government side. On being elected he is conducted by his proposer and seconder to the Speaker's chair, after which the Sergeant-at-Arms places the mace *upon* the table, signifying that the House is in session. After his election the Speaker-Elect thanks the House. The Prime Minister then announces the time at which the Commons are to present their Speaker at the House of Peers for His Majesty's Royal approbation.

(*d*) When the Speaker-Elect, summoned by Black Rod, presents himself at the House of Lords he is accompanied by the Sergeant-at-Arms, who carries the mace horizontally across his arms, in signification that the new Speaker is yet only Speaker-Elect. The Speaker-Elect presents himself at the Bar of the House, when the Lord Chancellor announces that the King approves and confirms the election.

(*e*) The Speaker then lays claim to all ancient rights and privileges of the House of Commons, *viz*:

(i) freedom of speech in debate; (ii) freedom from arrest; (iii) free access to His Majesty whenever occasion may require; and (iv) that the most favourable construction be placed upon all their proceedings.

The privilege of Parliament conferring immunity from arrest and trial does not extend to any offence in the nature of a breach of the peace, or otherwise affecting public order which is cognizable in the criminal courts. It only covers the Session plus forty days.

(*f*) When the Lord Chancellor has signified that the King confirms all these rights and privileges, the Speaker withdraws, the mace being carried shoulder high by the Sergeant-at-Arms as a proof of the ratification of the election.

Upon retirement the Speaker is usually elevated to the peerage and is granted a pension of £4,000 per annum.

THE PROCEDURE in the House of Commons then followed is—

(*a*) New Parliament—

(i) Swearing in of Members; (ii) Signing the Roll. The first to subscribe is the Speaker himself.

(*b*) Every Session—

(i) Re-reading of the King's Speech;
(ii) Humble Address and Debate thereon.

THE PRIME MINISTER. The office of Prime Minister is described on page 76 onwards.

His Majesty's Opposition

The phrase "His Majesty's Opposition" was first used by Lord Brougham. Since the reign of George V, official precedence has been accorded to the Leader of His Majesty's Opposition.

"No Government can be long secure without a formidable Opposition. It reduces their supporters to that tractable number which can be managed by the joint influences of fruition and of hope. . . . It employs the energies of aspiring spirits, who otherwise may prove traitors in a division or assassins in a debate." (*Disraeli.*)

Standing Orders

The Procedure in both Houses of Parliament is regulated by the Standing Orders which are to Parliament what Statute Law is to the Courts. There are about one hundred Public and about three hundred Private Standing Orders. Within the limits prescribed by Standing Orders, the time of the House is at the discretion of the House. These Standing Orders prescribe the—

Parliamentary Time Table

This was reconstructed in 1906, and at present is as follows—

The House of Commons meets during the Session on Mondays, Tuesdays, Wednesdays, and Thursdays at 2 45 p m., and on Fridays at 11 a m.

(1) Prayers (strangers not admitted except in Ladies' Gallery and Mr. Speaker's Gallery).
(2) Private business.
(3) Presentation of public petitions.
(4) Motions for unopposed returns and new writs
(5) Questions 3 to 3.45 p.m.
(6) Request for motions for adjournment.
(7) Introduction of new members
(8) Matters taken " at the commencement of public business," e.g introduction of Bills.
(9) Orders of the day, and motions set down " for discussion this day."

7.30 *p.m. regarded as commencement of evening session.*

(10) 11 p.m., no further opposed business unless by motion the 11 o'clock rule be suspended. Any matter may be raised, either unopposed business or exempt business.
(11) 11.30 p.m , House automatically stands adjourned.
4 p.m., Fridays, House adjourns.

NOTE. The Standing Orders may be suspended at the will of the House.

A SELECT COMMITTEE ON PROCEDURE ON PUBLIC BUSINESS issued its Report in November, 1932. It had taken evidence from the principal statesmen of all parties. Its most important recommendation was for effective control of public expenditure.

THE SELECT COMMITTEE ON THE HOURS OF MEETING AND RISING of the House of Commons, issued its Report in May, 1930.

FUNCTIONS OF PARLIAMENT. (See page 29)

Public Inquiries

When a subject assumes a character of national importance, it may be inquired into by (1) Royal Commission, (2) Departmental Committee, (3) Select Committee, or (4) Joint Select Committee.

A ROYAL COMMISSION is appointed by Royal Warrant countersigned by the Principal Secretary of State and the Report is addressed To the King's Most Excellent Majesty, *e.g.*, the Royal Commission on Local Government appointed the 14th day of February, 1923, which issued three Reports.

A DEPARTMENTAL COMMITTEE is appointed by the Head of the Department concerned with the subject of the Terms of Reference, *i e.*, the amount of ground it has to cover, *e.g.*, Departmental Committee on the Training and Recruiting of Local Government Officers appointed by the Ministry of Health which reported in January, 1934

Those who serve either on a Royal Commission or on a Departmental Committee need not be Members of Parliament or Civil Servants, or business or professional men; but they are always experts.

SELECT COMMITTEE. See page 62.

JOINT SELECT COMMITTEE. See page 62.

CHAPTER XII

THE PROCESS OF LEGISLATION

"LEGISLATION is the main means of securing the adaptation of law to the varying complexities of modern life and its adjustment to changing views of social policy." (*Lord Macmillan.*)

Petitions were adopted by the early Parliaments complaining of a breach of the "good and lawful customs of the realm," especially by the Royal officials, and the King was urged to issue a general Order against such practices; supplies would be held up until a favourable answer was furnished. Parliament subsequently submitted its petitions in the form of Bills. These Bills merely required the assent of the Crown to assume formal ratification.

A BILL is the draft of a proposed Act of Parliament. Bills are either Public or Private. They may originate in either House.

A *Public Bill* is one introduced as a measure of public policy, affecting the whole of the community, and originates upon the motion of a member of the Government or a private member.

A Private Bill is one introduced in the interests of an individual, corporation, or the inhabitants of a county, town, or other local government area and deals with such matters as waterworks, railways, etc., interfering with private rights of individuals.

The difference between the two types lies in the method of introduction.

Care should be taken to distinguish between a Private Bill and a Private Member's Bill. The latter is a proposed new law which concerns the nation generally, introduced by a member in his personal capacity and not as a member of the Government.

Private members are usually allotted Fridays for their Bills. At the commencement of each Parliamentary Session, private members ballot for precedence to introduce Bills.

CHARACTERISTICS OF A BILL. A Bill, whether Public or Private, contains certain features common to both, viz.—

The Preamble of a Bill is the introduction which gives the reason for the passing of the particular measure, *e g*, the Public Health (Smoke Abatement) Act, 1926, "An Act to amend the law relating to smoke nuisances and for other purposes connected therewith." It is followed by the introduction, viz., "Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by

the authority of the same, as follows: " (Compare this with a Money Bill, see page 251.)

The Parts of a Bill. A Bill may be divided into Parts, and the Parts into Clauses and subdivisions of Clauses which, when the Bill becomes an Act, are known as Sections and subsections respectively. A Bill usually has Schedules attached, including one which contains particulars of enactments amended or repealed.

Public Bills

A PUBLIC BILL may originate in either House. In the House of Commons it is introduced sometime between 3.45 p.m. and 11 p.m., when the House is in session.

Ten Minutes Rule. Public Bills may be introduced under the "ten minutes rule." The proposer introduces the Bill by a speech of not more than five minutes. He may be opposed by another member in a speech of not more than five minutes.

A Bill requires Three Readings before it passes from the House in which it was introduced to the other Chamber, and thence to receive the Royal Assent.

FIRST READING. A Public Bill is introduced by a member of the Government or by a private member as a matter of public policy. It is necessary that the member shall have received permission to introduce the Bill. This is done by giving notice of motion for leave to bring in the Bill—reading the title of the Bill is sufficient. Permission is given by the House for it to be brought in and printed. The Bill is handed to the Clerk of the House, who sees to the printing of the Bill. (It is usual, however, to hand him a dummy with the title written upon it.)

The Bill almost invariably goes through the first reading without opposition, the theory being that a member may rightfully circulate his ideas provided he does not take up the time of the House in so doing. Date is fixed for the Second Reading.

The SECOND READING produces a discussion on the principles which the Bill involves. If the Bill goes through the Second Reading without difficulty, it can usually be considered practically safe so far as that House is concerned.

COMMITTEE STAGE. The Committee system grew up under Elizabeth and her successors. Small Committees were appointed to consider the details of Bills and other matters, and sat usually at Westminster but sometimes at the Temple or elsewhere. For more important matters larger committees were appointed, and had a tendency to include all members who were willing to attend, for the difficulty was to obtain a quorum. Hence the system of Grand Committee and Committees of the Whole House. (See page 62.)

REPORT STAGE. In the form settled by the Committee the Bill is reported to the House. It is then ready for its third reading.

THIRD READING. At the Third Reading, only verbal or drafting amendments for the purpose of correcting cross-references and other similar objects are allowed.

THE OTHER HOUSE. On the Third Reading being carried, an order is made that the Clerk of the House "carry the Bill to the Lords and desire their concurrence." The Bill is endorsed in Norman French *Soit baille' aux seigneurs* (Let it be delivered to the Lords).

If material alterations are made the Bill is returned to the Commons endorsed with the words: *A cette Bill avesque des amendamens les seigneurs sont assentus* (To this Bill with amendments the Lords have agreed). If the Commons agree to the Lord's amendments the Bill is endorsed with the words *A ces amendamens les Commons soit assentus* (To these amendments the Commons have agreed).

Should the Commons reject the Bill, it is returned to the Lords with a message that the Commons cannot accept the amendments. Usually, certain amendments are accepted and others rejected, the Bill passing from one House to the other until a final agreement is reached If there is a deadlock a Joint Committee is appointed.

ROYAL ASSENT. It is now only necessary to obtain the Royal Assent and the Bill becomes an Act of Parliament.

The Act of Parliament Commencement Act, 1793, provides that a statute operates on and from the day on which it receives the Royal Assent unless some other date is expressed.

The Closure

THE CLOSURE is a motion made by the member in charge of the Bill, and accepted by the Chair and the House, which results in closing the debate. It prevents unnecessary repetition.

(1) *Ordinary Closure.* At any stage in the debate any member, usually the member in charge of the Bill, can propose that the "Question be now put."

(2) *Kangaroo Closure.* The "Kangaroo," authorizes the Speaker or Chairman of Committees, with the approval of one hundred members, to select the most important amendments for discussion.

(3) *Guillotine, or Closure by Compartments.* The House passes a resolution dividing a Bill into Compartments, and insists that certain compartments shall be brought to a close each day.

A "BLOCKING MOTION." If a member anticipating a discussion introduces a Bill upon the subject prior to the date of discussion, any further discussion during that session is "blocked," until the Bill is disposed of.

Procedure

A Report by a Select Committee on Parliamentary Procedure was issued on 17th November, 1932. Three major issues emerged from the evidence—

(1) The advisability and possibility of shorter sessions,
(2) The problem of the Standing Committees,
(3) The practice of financial control. (See Chapter XXXVI.)

With regard to the first, the committee concluded that this depended on the willingness of Governments to adopt a settled and limited programme of Parliamentary work. As to the second, the Committee came to the conclusion that there should be no change in the size or number of Standing Committees.

Standing Committees of the House of Commons

Until the Parliamentary procedure was altered in 1906 a Bill went automatically to a Committee of the Whole House. Now it goes automatically to a Standing Committee, except a Finance Bill, a Consolidated Fund Bill, an Appropriation Bill, Bills confirming Provisional Orders, or important Bills for which the House makes a special order.

A Standing Committee consists of forty to sixty members. The quorum is twenty. There are six of these Standing Committees, one of which is the Scottish Committee. In these committees the Bill is thoroughly examined and discussed word by word if necessary, and when any necessary amendments have been made the Bill is reported to the House and is then read a third time or rejected.

These committees are chosen by the Committee of Selection in such a way that each is a miniature House, the political complexion being proportionately represented. In this way it is assured that the Bill will receive similar consideration as it would receive in the House, and the time of the House is saved.

There is no classification of Bills which decides to which of the Standing Committees any one shall go, except that all Bills dealing with Scottish affairs go to the Scottish Committee. Bills relating to local government before 1931 went to the Local Legislation Committee, but since then this Committee has not been reappointed.

Other Committees of the House of Commons

In November, 1934, the House of Commons, on the recommendation of the Committee of Procedure, decided that the Chairmen of Standing Committees to which Bills are referred should have the power already possessed by the Chairman of Committee of the whole House to select the amendments for

discussion. The Chairmen of Committees will, in future, be appointed by the Speaker instead of by the Committee of Selection.

The principal Committees are as follows—

The Committee of the Whole House is in reality nothing but the whole House acting under special forms of procedure, presided over by the Chairman of Committees.

The Committee of Supply, the *Committee of Ways and Means*, the *Committee on Estimates*, and the *Public Accounts Committee* are dealt with in the section on Public Finance.

The Scottish Committee was re-constituted in 1907. The membership consists of the Scottish members, together with not less than ten nor more than fifteen other members nominated by the Committee of Selection.

A Select Committee is appointed by resolution of either or both Houses of Parliament, *e.g.*, Select Committee of the House of Commons on Private Bills which reported in 1930. The Committee have power to send for persons, papers, and records, and consists normally of fifteen members, although the number is often smaller. Select Committees are the only organs of the House for collecting evidence and summoning and examining witnesses. To these committees are referred Bills which are introducing a new principle of legislation. The sittings may be prolonged into more than one session.

After the Select Committee has dealt with the Bill it goes to the Committee of the whole House or a Standing Committee.

A Joint Select Committee consists of an equal number of members of both Houses of Parliament, *e.g.*, the Joint Select Committee on Indian Constitutional Reform, 1934.

The Committee of Selection is usually composed of six members of the party in office and five members from the Opposition. They are members of considerable Parliamentary experience and appoint the Standing (and often Select) Committees.

A Joint Committee (chiefly for Private Bills) consists of an equal number of members from each House, selected from among the leading supporters and opponents of a particular measure, the object being to effect a compromise.

A Hybrid Committee consists of an equal number of members selected from both sides of the House, together with members elected by the House itself and the House of Lords. This committee considers all Bills which are concerned with the relationship between the Lords and the Commons.

The Committee of Privileges. This Committee is chosen each Session by the House of Commons from among its most experienced and trusted members, all of them jealous of the privileges of the House and capable of a judicial examination of questions referred for their examination.

Private Bill Legislation

One of the first steps taken at the assembling of a Parliament was the " trying " or the examination of the petitions which the representatives brought from their constituents. Where Parliament became satisfied of its justice it would adopt the petition as its own, and pray the Crown to grant its prayer. This is the origin of what is now called Private Bill Legislation.

(1) A Private Bill is introduced on a petition for leave by persons interested. It is lodged with the Clerk of Parliament for the House of Lords and the Private Bill Office of the House of Commons by the parliamentary agents of the promoters.

(2) Private Bills are classified as First-class and Second-class. Generally, First-class Bills are those where no works are to be executed. Second-class Bills are those where works are to be undertaken and consequently interfere with private rights. An omnibus Bill is usually classified as a Second-class Bill, as it contains proposals relating to various subjects.

(3) About one-half of the Private Bills are introduced in the House of Lords as a matter of convenience.

(4) When a Bill is deposited it is inquired into by the Examiner of Standing Orders of Parliament, and if the Examiner finds that there has been a non-compliance in any particular it is open to the promoters to apply to the Houses to have the particular Standing Order dispensed with.

(5) The Bill, when deposited, is open to opposition from (*a*) private sources, (*b*) Government Departments.

(6) Having passed the first and second Reading, the Bill proceeds to the Committee Stage.

Group Committees. In 1882 was appointed a special committee to which all local bills containing police or sanitary provisions were referred. These committees were called Local Legislation Committees. This Committee was from 1884 to 1931 re-appointed annually, and dealt with all local Bills which proposed any departure from general law. Following the Report of a Select Committee on Private Bills, this Committee was abolished in the Session of 1931 and the local authorities' Bills are now included in two or three groups, with special reference to the personnel of the Committee or are taken by the Unopposed Committee.

The Unopposed Committee is composed of five members, viz., the Chairman of Ways and Means (who, when present, is *ex officio* Chairman of every such committee), the Deputy Chairman, two members from time to time selected by the Chairman of Ways and Means from a panel to be appointed by

the Committee of Selection at the commencement of every session, and counsel to Mr. Speaker. Three is a quorum.

Private Bills relating to Scotland may be dealt with by a different method. The Secretary of State for Scotland is empowered under the Private Legislation Procedure (Scotland) Act, 1899, to grant Provisional Orders where formerly a Private Bill would have been required. These Provisional Orders are then confirmed by Act of Parliament which, on introduction, is deemed to have passed through all stages, including the Committee stage.

Repeal of Statute Law

A statute of the British Parliament is law until repealed. Such repeal may be effected either directly or by the statute being superseded by a later Act. When such later Act is repealed, however, the former statute does not revive

Unlike the British Acts, statutes of the Scottish Parliament may be tacitly abrogated by a contrary universal practice springing up in the community. When a Scottish statute has been so long disused that the Court holds it to have ceased to be operative, it is said to have "fallen into disuetude." (*vide Mann* v. *Edinburgh Corporation*, 1913.)

Provisional Orders

(*a*) A Provisional Order is any certificate, scheme, or order made by a Government department under statute, granting to a local authority, private persons, or private corporation, authority to perform certain functions such as street improvements, erection of municipal buildings, and works of public utility, *e.g.*, gas and water works, etc.

(*b*) Procedure is similar to that for a Private Bill, but in the first instance application has to be made to the Government department concerned (Board of Trade, Ministry of Health, etc.).

(*c*) At the same time as the scheme is submitted, it must be advertised for two successive weeks in newspapers circulating in the district affected.

(*d*) Copies of the scheme must be sent to all Government departments affected, and notice given to all local authorities concerned.

(*e*) If the department concerned so decides, an inspector is sent down to hold a local inquiry, of which public notice is given. The inspector hears evidence, and reports to the department. If the department, after considering the report, decides in favour of the proposal, a Provisional Order is drawn up, granting the required powers, subject to confirmation by Parliament.

(*f*) Provisional Orders are incorporated by each department in a Provisional Orders Confirmation Bill, and submitted to Parliament by the respective Ministers. The Bill generally passes through all stages unopposed. In the event of its being opposed, it goes before a Select Committee in the same manner as a Private Bill. Until confirmed by Parliament, the Order cannot legally be acted upon.

(*g*) The Ministry of Health has laid down the principle that Private Bills must not be introduced where a Provisional Order will answer the same purpose, and has intimated that it will oppose all Private Bills so introduced.

(*h*) The Public Works Facilities Act, 1930, has further simplified the procedure, for purposes of that Act.

Special Order

A Special Order is made by a Government department under statutory authority, and becomes effective by the simple process of a Resolution of Approval, with or without modification, in each House. This is in accordance with the recommendation of the Acquisition of Powers Sub-Committee of the Ministry of Reconstruction in 1917.

Statutory Rules, Orders and Regulations

These are issued by the Minister in charge of a Department and have effect as if incorporated in the Act of Parliament under which they are made, *e g*, the General Regulations under the Town and Country Planning Act, 1932.

White Paper

A White Paper is a document issued by the Government or a Government Department setting out certain matters for the consideration of Parliament, *e.g.*, White Paper on National Defence, 1936.

Blue Book

A Blue Book is that which usually contains the Report of a Royal Commission or Departmental Committee, *e g.*, the Report of the Departmental Committee on the Consolidation of Local Government and Public Health Legislation.

Petitions

Petitions can only be presented through a Member. The Corporation of the City of London only has the privilege of presenting petitions at the Bar of House. A Standing Committee examines and classifies them and reports at intervals to the House.

Suspension of Sittings

There are three methods by which the sittings of Parliament can be suspended, viz.—

(1) *By adjournment* on the initiative of the House itself.

(2) *By prorogation* on the initiative of the Crown acting on the advice of the ministers.

(3) *By dissolution* on the initiative of the Crown acting on the advice of the ministers.

Dissolution

" It must not be forgotten that although Parliament is said to be dissolved, dissolution extends, in fact, no further than to the Commons. The Peers are not affected. So far, therefore, as the House of Lords is concerned, the creation of peers by the Crown on extraordinary occasions is the only equivalent which the Constitution has provided for a change and renovation in the House of Commons by dissolution. In no other way can the opinions of the House of Lords be brought into harmony with those of the people." (*Sir Erskine May.*)

CHAPTER XIII

PRINCIPLES OF LEGISLATION

By legislation is meant the formal announcement of general compulsory rules of conduct intended to be more or less permanent. Legislation is enacted by a definite authority—a person or a body of persons.

The legislation of this country during the past hundred years may be classified as follows—

(*a*) Statutes of Emancipation—

Catholics, 1829
Parliamentary Reform, 1832
Education Grants, 1833
Municipal Corporations, 1835
Civil Service, 1855
Jews, 1859
Army, 1870
Trade Unions recognized, 1871
Ballot Act, 1872
Sex Disqualification Removal, 1919

(*b*) Statutes of Construction—

Poor Law, 1834
Public Health, 1875
Factories, 1875
Mines Regulation Acts
Education (School Boards), 1870
Building Societies, 1874
Industrial & Provident Societies recognized, 1867

(*c*) Statutes of Social Reform—

Provision of Meals for School Children, 1906
Old Age Pensions, 1908
Trade Boards, 1909
Employment Exchanges, 1909
National Insurance, 1911
Maternity and Child Welfare, 1918
Widows', Orphans', and Old Age Contributory Pensions, 1925.

A Government attempts to do good as well as to prevent evil, and its system of legislation is based on certain principles. The principles of legislation are an integral part of the functions of government, obligatory and optional. Some laws, such as those relating to the defence of the State, must be passed in the interest of the whole nation. Others are passed because, although not essential, they are desirable, and have imposed upon the public a legal obligation in respect of some matters which would otherwise be disregarded by many. Other laws are applicable to special conditions or local areas.

Although the legislature is all-powerful as regards the kind and number of Acts, yet there are certain restrictions placed upon its system of action. As already explained, no Act will be passed which is contrary to the moral code or which is opposed to international law. For instance, there is no Act of Parliament

contrary to the Ten Commandments, nor does the British Parliament legislate for any foreign state over which it has no dominion. The limits to legislation may be said to be—(1) Natural and Economic Laws. (2) The Area of the State. (3) The Popular Will.

EXPERIENCE. Some Acts have been based on experiment, *i.e.*, on the success of previous Acts. Bacon asserted that all legislation should be based on experience. In 1870, during the passage of the Education Bill, the ballot was put to the test for School Boards and it was found to be so successful that in 1872 the Ballot Act was passed extending the practice to parliamentary elections. Many of the present laws are based upon experience gained from the success or failure of previous Acts, more especially of Acts promoted by local authorities. Local authorities have obtained power to enforce a certain measure and the Central Government have been so impressed with the success which it has attained, that the principle has been applied by a general Act of Parliament to the country. Liverpool was the first local authority to have a Medical Officer of Health. Now it is necessary to appoint a full time Medical Officer in every county borough and administrative county.

SEQUENTIAL. Some laws are sequential, that is, one law is a necessary corollary to another. When uneducated people received the vote in 1867, political needs asserted the desirability of educating the newly enfranchised masses. Consequently, the Education Act, 1870, was passed.

SOCIAL AND ECONOMIC. As the community grows it becomes necessary to enforce a certain amount of social legislation, both economic and ethical. At the beginning of the nineteenth century the system of poor law administration invited the people to become paupers, and so to prevent an economic collapse of the nation the Poor Law Amendment Act was passed in 1834. In 1908 the Old Age Pensions Act came into force.

ETHICAL. The object of ethical legislation is the preservation of the integrity of the State. By compulsory registration of births, marriages, and deaths, a stop is put to fraud in the case of succession to estate and the nation is saved from much moral degradation. Certain sections of the Children and Young Persons Act, 1933, are ethical and economic. To preserve the national stamina, smoking is prohibited under the age of 16, parents are forbidden to give their young children alcoholic liquors, and with a view to preventing children from developing intemperate habits, children are not allowed to enter a public-house while under the age of 14.

ENFORCEMENT OF NATURAL LAWS. There are some natural laws which must be brought home to people. Many people know the consequences which may be expected from an insanitary

town or district, but there are those who do not, so it has been found necessary to enforce the Public Health Acts. Miners who smoke in the mines cause disastrous results. To prevent this and other dangerous practices, the Mines Regulation Acts have been passed. A ship is in danger if she is overloaded or undermanned, or is not tight and staunch, or is ill-officered; to enforce compliance the Merchant Shipping Act, 1894, was passed.

PROTECTION OF PERSONS. In addition to legislating for special authorities and corporations, the State recognizes her duty to various classes of the community, and Acts have been passed to help and protect them. Factory Acts protect women and children and indirectly the workman also. The Mental Treatment Acts protect persons of unsound mind. In 1909 the Labour Exchanges Act was passed, which made provision for a market for labour, where unemployed workmen could be aided in their search for work. A class of the community in need of special help has been protected and aided by the Children Act, 1908, now the Children and Young Persons Act, 1933, and the various Education Acts.

LOCAL. General Acts, simply because they are general, cannot successfully administer to special or particular needs Different districts must have additional or amended Acts, hence the necessity for localized Acts. The Stipendiary Magistrates Act, 1868, refers to towns having a population of 25,000. The Acts necessary for administration of local authorities have given rise to such measures as the London Government Act, 1899, and the Port of London Act, 1908, which relate only to the areas named in the Acts.

INTERPRETATION OF STATUTES.

(1) The words of a section of a statute must be construed according to the ordinary canon of construction, that is to say, by giving them their ordinary and natural meaning. (Lord Esher in *Clerical, etc., Society* v. *Carter* (1889), 22 Q.B.D., p. 448.)

(2) Where there is any doubt as to the true construction of the *words*, the circumstances under which the Statute was passed should be taken into account in arriving at a proper interpretation.

(3) The Title as well as the Preamble, but not the marginal notes form part of the Statute.

(4) General words following on particular terms have their meaning restricted by the particular terms they follow.

(5) Unless otherwise provided, statutes come into force on the day on which they receive the royal assent.

(6) Statutes ought to be considered in relation to the old law, the mischief and the remedy.

(7) Remedial statutes shall be more liberally, and penal statutes more strictly, construed.

(8) In construing a statute, all other analogous statutes should be taken into consideration.

(9) Statutes dealing with inferior things or persons cannot, by general words, be extended to superior ones.

(10) Statutes affecting the private rights of individuals or imposing pecuniary burdens must be interpreted in their strictest sense rather than in a general sense.

(11) Subsequent statutes may repeal a prior one, not necessarily expressly, but possibly by implication, as when it shall be repugnant to the prior one.

THE FINAL TEST of all legislation is the effect it has on the minds and characters of individual citizens. To be thoroughly successful, law must ultimately arise from subjective conviction, not from objective application.

"*The Spiritual* nature of man is stronger than codes or constitutions. No government can endure which does not recognize that for its foundation, and no legislation last which does not flow from this fountain." (*Disraeli.*)

CHAPTER XIV

THE PRIVY COUNCIL, THE MINISTRY, THE CABINET, THE PRIME MINISTER, AND THE CIVIL SERVICE

THE EXECUTIVE has three branches—

(1) Formal: Crown and Privy Council.
(2) Political: Ministry and Cabinet.
(3) Professional: Defence Services and Civil Service.

THE MINISTRY. The Ministry is the body of ministers charged for the time being with the administration of the country.

A Minister is a high officer of state; the person appointed by the chief of state to act for him in a particular department of government. He is one entrusted with the administration of a department—a Minister or a Secretary of State.

Some of the members of the Ministry are known as Secretaries of State, *e.g.*, Secretary of State for the Dominions, others as Ministers, *e.g.*, the Minister of Health; and others as Presidents, *e.g.*, the President of the Board of Education.

A Board is a table at which a council is held; hence, a meeting of such a council round the table. Hence the company of persons who meet at such a council table. A "Board" is the recognized word for a body of persons officially constituted for the transaction and superintendence of some particular business indicated by the full title, as the Board of Trade, the Board of Education. In most cases the Board never meets, *e.g.*, the Board of Education, and the work is carried out by officials, subject to ministerial direction.

Constitution of a Ministry

At a general election each of the great parties in the State strives to attain a majority. The party which secures this majority in the House of Commons automatically takes control of the government of the country, and we then speak of having a Conservative, a Labour, or a Liberal Government. All the chief offices of the Government fall to the leaders of this party. These form the Ministry. Each minister is usually in charge of a department, and in that capacity has to perform certain functions. He keeps his department in touch with the community and with Parliament, and the defence of the policy of his department falls to him. The principal members of the Ministry are known as the Cabinet. The Re-election of Ministers Act (1919) Amendment Act, 1926,

removes the necessity for the re-election of members of the House of Commons on acceptance of office.

The Prime Minister is the head of the Ministry. In addition to the Secretaries of State and the political heads of the other Government Departments, the Ministry consists of—

(1) The Lord Chancellor.

(2) The Chancellor of the Duchy of Lancaster, the Minister of Pensions, the First Commissioner of Works.

(3) The Junior Lords of the Treasury, the Financial and Patronage Secretaries of the Treasury, the Paymaster-General, the Financial Secretaries to the Admiralty and War Office.

(4) The Parliamentary Under-Secretaries of State.

(5) The Parliamentary Secretaries to the Board of Trade, Department of Overseas Trade, Board of Education, Ministry of Health, Ministry of Agriculture and Fisheries, and Ministry of Transport.

(6) Secretary for Mines.

(7) Attorney-General, Solicitor-General, Lord Advocate for Scotland, Solicitor-General for Scotland, and

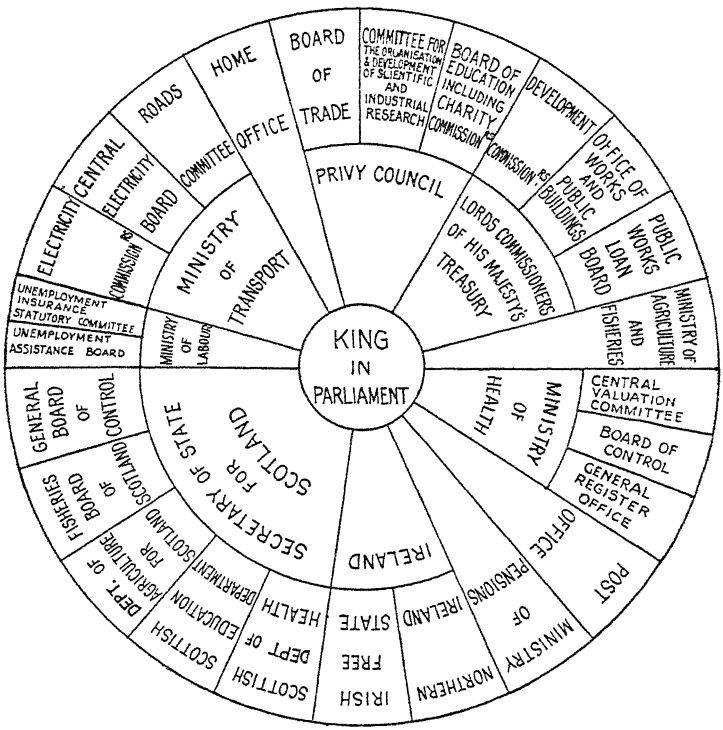
(8) Various officers of the King's Household, *e.g.*, the Lord Steward and the Lord Chamberlain.

SALARIES OF MINISTERS. In March, 1936, the House of Commons approved a resolution that the problem of anomalies in Ministerial salaries should be dealt with on the lines of the Select Committees of 1920 and 1930.

The Privy Council

The Privy Council numbers at the present time over 300 members. It is composed of persons eminent in every walk of life. Certain members of the Royal House are *introduced* into the Council. The Archbishops of Canterbury and York, the Bishop of London, and the Speaker of the House of Commons are, by virtue of their respective offices, sworn of the Council, likewise all Cabinet Ministers on first assuming office; also certain holders of high judicial offices, viz., the Lords of Appeal, the Lords Justices of Appeal, the Master of the Rolls, the Lord Chief Justice of England, and certain Judges from India and the Dominions who assist in the Judicial Committee of the Council. His Majesty's Ambassadors to foreign Courts, the Governors-General of India and the various Dominions, and many leading Colonial and Indian statesmen are included on the Roll. The following Great Officers of State, viz., the Lord Steward of the Household, the Lord Chamberlain of the Household, and the Master of the Horse are, together with certain other members of His Majesty's Household, sworn of the Council. The Lord President is always a member of the Cabinet.

CENTRAL DEPARTMENTS OF THE STATE DEALING WITH LOCAL GOVERNMENT IN THE UNITED KINGDOM



NOTE.—In attempting a visual representation of this kind some suggestion of false proportion is inevitable, and it is well to warn the reader that the spaces allotted to different departments must not be taken as an indication of their relative importance.

A Privy Councillor is bound by oath to keep secret "all matters committed and revealed unto him or that shall be treated of secretly in Council."

At meetings of the Privy Council when the King is present, three Privy Councillors form a quorum, but as a matter of fact, never less than four Councillors are summoned to attend. These are drawn from the members of the Government of the day, the Great Officers of State, other members of His Majesty's Household, and members of either House of Parliament in political sympathy with the Government.

The only occasions on which the Privy Council is summoned as a whole is on the demise of the Crown, and when the Sovereign announces his intention to marry.

The Privy Council has many functions, both executive and ministerial, including the granting of Charters of Incorporation, the fixing of dates for the operation of new statutes, the issue of Orders directing a census to be taken under the Census Act, 1920, and the transfer of departmental powers. The tendency of modern legislation to supplement its provisions by Orders in Council is largely responsible for the great increase in the number of Orders issued.

The Judicial Committee of the Privy Council is the final Court of Appeal from India, the Dominions and Colonies, and also in Ecclesiastical Causes (see page 208)

The Board of Trade and the Board of Education are theoretically Committees of the Privy Council. In 1915 there was established a Committee for the Organization and Development of Scientific and Industrial Research.

The Cabinet

From the Privy Council arose the Cabinet—"a committee of the legislative body selected to be the executive body." The Cabinet is an informal council of the Crown, consisting of the chief members of the Government. In normal times it consists of members of the party that has the majority in the House of Commons; the minority parties are not represented at all. It is to be noted that the Cabinet has no legal powers as such, and, in fact, is not recognized by law, belonging not to the law but to the custom of the constitution. It began to be prominent after the Restoration of 1660, but the first Cabinet constructed on modern principles, *i.e.*, consisting exclusively of members of one political party, was formed under William III. Dicey says that, "While every act of the state is done in the name of the Crown, the real executive government of the country is the Cabinet."

Its function is to bring about a co-operation among the different

forces of the State without interfering with their legal independence. It is not an elective body, but is appointed by the Crown on the recommendation of the Prime Minister, who considers the whole list of probables supplied to him by the party caucus. It has no fixed number of members, the Prime Minister determining this. William Pitt had only six members. Now the number varies between twenty and twenty-five, but during the Great War the membership of the War Cabinet was at one time reduced to five.

The Cabinet Ministers—

(*a*) Are necessarily members of Parliament and of the Privy Council.

(*b*) In normal times are members of the same political party.

(*c*) In normal times, prosecute a concerted policy with collective responsibility.

If an individual member cannot accept the responsibility he resigns, as in the case of the "Samuelite Liberals" after the Ottawa Conference, 1932.

(*d*) All owe allegiance (in a popular sense) to the Prime Minister, whose resignation dissolves the Cabinet.

"While each Minister is an adviser of the Crown, the Cabinet is an unity, and none of its members can advise as an individual without, or in opposition actual or presumed, to his colleagues." (*Gladstone.*)

It is, strictly speaking, incorrect to describe the Cabinet as a Committee of the Privy Council. Every meeting of the Privy Council at which the Crown is not present is technically a Committee, and as such is the body known to the law.

There are certain offices the holders of which are usually Cabinet Ministers, viz., the Lord Chancellor, the First Lord of the Treasury, the Chancellor of the Exchequer, the Lord President of the Privy Council, the Secretaries of State, and the First Lord of the Admiralty. The other members are indefinite, but the following may be included, viz., the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Postmaster-General, the First Commissioner of Works, the Presidents of the Boards of Trade and Education, the Minister of Agriculture and Fisheries, the Minister of Health, the Minister of Labour, and the Minister of Transport. The office of Secretary for Scotland was elevated to that of a Secretary of State in 1926.

Since the establishment of the War Cabinet in 1916 there has been a Secretary of the Cabinet and minutes of the proceedings have been taken. The post-War decision taken, it is believed, by Mr. Bonar Law, limits the records to Cabinet "conclusions." With the fall of the Coalition Government in 1922, the office of Cabinet Secretary has been combined with that of the Secretary

of the Committee of Imperial Defence, and the Committee of Civil Research. The office of Clerk of the Privy Council has been combined with the Secretariat. The Privy Council staff is independent of the Treasury and the Cabinet Secretaryship.

Economic Advisory Council

By a Treasury Minute, dated 27th January, 1930, an Economic Advisory Council was constituted, consisting of

The Prime Minister (Chairman),
The Chancellor of the Exchequer;
The Lord Privy Seal (while the then duties were attached to that office);
The President of the Board of Trade; and
The Minister of Agriculture and Fisheries.
Such other Ministers as the Prime Minister may from time to time summon, and such other persons, chosen by the Prime Minister, in virtue of their special knowledge and experience in industry and economics.

The purpose of the Council is to advise His Majesty's Government in economic matters and in the use of national and Imperial resources of the effect of legislation and fiscal policy at home and abroad, and of all aspects of national, Imperial, and international economy with a bearing on the prosperity of the country.

The Prime Minister

The Cabinet is presided over by the Prime Minister or Premier. He has no salary as Prime Minister, hence he usually holds another (paid) office under the Crown. The position of First, or Prime, Minister, although it had actually been in existence since the time of Walpole (that is, the middle of the eighteenth century), was not legally recognized until 23rd December, 1905, when by Royal Warrant the Prime Minister was given precedence as the fourth person in the realm. He has no legal supremacy, but in normal times he is leader of the House of which he is a member He is a member of the Privy Council and the holder of an office in the Cabinet, usually that of First Lord of the Treasury. He enjoys a unique position. The only express reference to him in the whole of the statutes is in the Chequers Estate Act, 1917, which acknowledges a private benefaction.

The Prime Minister is selected by the Crown, usually on the advice of the retiring Prime Minister, and is himself entrusted with the selection of his colleagues in the Ministry. He has the power to choose his ministers, subject to the political caucus, and has power to dismiss them in individual cases. This principle was successfully established by Sir Robert Peel on his taking office in 1834.

It is the duty of the Prime Minister to inform the Crown of the general business of the Cabinet and to settle all disputes in the Cabinet. He exercises a general supervision over all the departments. He must keep a careful watch on the progress of all Government measures, and he is expected to speak not only on all general questions, but on the most important Government Bills. It is his duty to decide all matters of high policy, and the resignation of the Prime Minister means the fall of the Government. The Prime Minister recommends the appointment of archbishops, bishops, deans, and persons to the Crown livings; the appointment of the Lord Chief Justice, and awards of titles and distinctions.

The machinery of Government is one of wheels within wheels; the outside ring consists of the party with the majority in the Commons, the next ring is in the ministry, which comprises the persons who are the most active within the party, the smallest ring of all being the Cabinet, which consists of the real leaders or chiefs. The Cabinet is led by the Prime Minister, who is the very core and centre of the Government.

No. 10 Downing Street. No. 10 Downing Street, Whitehall, London, S.W.1, is the official residence of the Prime Minister. It was in the year 1731–2, on the occasion of Count Bothmar's death, that No. 10 Downing Street was offered by George II to Sir Robert Walpole, who would only accept it for his office of First Lord of the Treasury, to which post he had it annexed for ever. This famous house is owned by the State.

Cabinet meetings are, and have been, frequently held there but it has not been, and is not now, the invariable rule that they shall be held there. The Cabinet may, in a general way, meet anywhere, and at any time, to suit the convenience of the Prime Minister and his colleagues.

Chequers Court. On 5th October, 1917, it was announced that Lord Lee of Fareham (then Colonel Sir Arthur Lee, K.C.B., M.P.) had presented to the nation the Chequers Estate, with the mansion house and its artistic and other treasures, in order that the house might be used and maintained in perpetuity as the official country residence of the British Prime Minister for the time being.

The main features of the scheme are designed not merely to make Chequers available as the official country residence of the Prime Minister of the day, but to tempt him to visit it regularly, and to make it possible for him to live there even if his income be limited to his salary. With this object a sufficient endowment is provided to cover the cost of a permanent nucleus staff of servants, of keeping up the gardens and grounds, of maintenance

and repairs, and other necessary outgoings. There is also a "residential" allowance for the official occupant.

The estate, apart from the house, has a total area of about 1,500 acres. This consists of the gardens and grounds round the house, the farms, the woods and Coombe Hill. The last mentioned, which is the highest point of the Chilterns (852 feet), commanding one of the widest prospects in England, had previously been given to the "National Trust" by a deed dated June, 1913.

Political Pensions

In addition to their salaries and first-class travelling facilities as Members of Parliament, ministers are enabled to claim the privileges of the Political Offices Pension Act, 1869. This Act does not apply to any office in the permanent Civil Service, or any legal office except that of Judge-Advocate-General, while the pensions of the Lord Chancellor and Speaker are not affected by this Act. The pensions are twelve in number and are divided into three classes, viz.—

Class.	Salary not less than	Years of Service.	Maximum Pension.
I	£5,000	4	£2,000
II	2,000	6	1,200
III	1,000	10	800

Service need not be continuous. Service in any office in Class III may count as service for half in Class II; and service in any office in Class II may count as service for half in Class I. To qualify for a Class I pension two years' minimum service is required in that class; and to qualify for a Class II pension, three years' minimum service is required in that class.

There cannot be more than four pensions in any class at a time, and not more than one can be granted per annum. Applicants must file a declaration with the Treasury stating the grounds of claim, with a statement of services. The applicant must make a declaration that the amount of his income from other sources is so limited as to bring the applicant within the meaning of the Act, viz., the inadequacy of his private income to maintain his station in life.

The Civil Service

DEFINITION. A civil servant is defined as a person who has served in an established capacity in the permanent Civil Service of the State within the meaning of Section 17 of the Superannuation Act, 1859. No person shall be deemed to have served in the permanent Civil Service of the State unless such person holds his appointment directly from the Crown, or has been admitted into

the Civil Service with a certificate from the Civil Service Commissioners. (*Ibid.*, Section 17.)

Under this general name are included all those persons, male and female, who are engaged in the administration of the affairs of the nation, exclusive of the members of the Navy, Army, and Air Force.

Each principal department is under the nominal control of a minister, a political head, who may or may not be a member of the Cabinet. He is not an expert on the work of his department, and his function is to keep the permanent staff in touch with the views of Parliament and the general public. The real working of the Department is in the hands of the permanent officials, known as Civil Servants, under the control of a Permanent Under Secretary who is responsible to the Minister. The tenure of office of these officials does not depend on the stability of the Government. Many of them are persons who have risen in the service from comparatively small beginnings.

The early civil servants were clergymen, who necessarily filled such positions by reason of the fact that they were the educated members of the community. Later, however, they were gradually displaced by laymen. From the earliest days down to the second half of the nineteenth century civil servants were appointed by nomination in the gift of the ministers at the head of the particular department, and no special qualifications were demanded from the holders of office.

Professor H. J. Laski claims that the greatest achievement of Victorian democracy was the establishment of an honest, efficient, and incorruptible Civil Service.

The introduction of the professional administrative service in India was followed by the experiments (assistant commissioners, etc.) of 1832–39, the Trevelyan Report of 1853, and the establishment of the Civil Service Commission in 1855, when appointments in the Civil Service were thrown open to competitive examination for the junior appointments. Since the Orders in Council of 1870 there has been a steady growth in the intellectual calibre as the result of competitive examinations. Even in the Foreign Office the restrictions have been removed, and in the Regulations for H.M. Diplomatic Service, published by the Foreign Office in 1924, the following words appear in paragraph 1: "No assurance as to the possession of private means will be required of candidates." The regular system of recruitment by open competition has been largely suspended of late years in favour of ex-service men and of women who rendered public service during the Great War. The Civil Service has accepted the principle of the application of the Whitley Council system both nationally and departmentally.

THE ROYAL COMMISSION ON THE CIVIL SERVICE issued their Report in July, 1931. The chairman was Lord Tomlin. The Commissioners approved the classification adopted for the principal Departments of State in accordance with the plan suggested by the Reorganization Committee of the Civil Service National Whitley Council dated 1920.

The four main classes of this scheme are—

(1) The administrative class, recruited annually by competition suited to the best university graduates.

(2) The executive class, recruited normally by an examination suited to the best products of higher secondary education.

(3) The clerical class, intended to be drawn from those young people who have reached the standard of the first school examination.

(4) Writing assistants, a class intended for girls who have completed a sound course of primary schooling.

With regard to women the Commissioners recommended the policy of a "fair field and no favour", so far as possible all posts should be open to men and women alike. The majority recommended that the cost of living bonus should be consolidated with basic salary.

WHITLEY COUNCILS. In 1919 a scheme of Whitley Councils for the Administrative and Legal Departments of the Civil Service was adopted by the Government following upon a report by a National Provisional Joint Committee, *i.e*, Whitley Report 1919 (Cmd. 198). Under this scheme there have been set up a National Whitley Council for the Administrative and Legal Departments as a whole, Departmental Councils in the respective departments of the Service, and District or Local Committees in departments with scattered provincial staffs.

CIVIL SERVICE SUPERANNUATION as from 1st July, 1934, has been placed on a new basis by a Treasury Minute issued on the 30th July, 1934.

WHITEHALL site comprising Whitehall Gardens and Montagu House is to be rebuilt to house the Air Ministry, the Ministry of Labour, the Board of Trade and the Ministry of Transport. Mr. E. Vincent Harris is the architect. One half of the building should be completed about 1940-1, and the whole about 1945-6.

"Let us not forget also an influence too much underrated in this age of bustling mediocrity—the influence of individual character. Great spirits may yet arise to guide the groaning helm through the world of troubled waters; spirits whose proud destiny it may still be at the same time to maintain the glory of the Empire and to secure the happiness of the People." (*Disraeli* in an election pamphlet published in 1833.)

SECTION IV

INTERNAL DEVELOPMENT

CHAPTER XV

THE HOME OFFICE; THE SCOTTISH OFFICE AND NORTHERN IRELAND

THERE are eight Secretaries of State, viz., the Home Secretary, the Foreign Secretary, the Secretary for War, the Secretary for the Colonies, the Secretary for India, the Secretary for Air, the Secretary for Scotland, and the Secretary for the Dominions. Legally, they all share the same office and can each (except where otherwise provided by statute) perform the duties of the rest. The division of functions between them is merely a matter of arrangement. One must always be present in the Metropolis. All of them have seats in the Cabinet.

The Home Office

The principal Secretary of State is the Home Secretary. His office dates from 1782, when the two principal Secretaries of State, the Northern and the Southern, were re-adjusted. He is entrusted with all the work of the secretariat which has not been especially assigned by law or established by custom to the remaining Secretaries of State or to the other administrative departments.

ADMINISTRATION The Home Secretary is assisted in his work by a Parliamentary Under-Secretary, a Permanent Under-Secretary, a Prison Commission, a Metropolitan Police Commission, and a host of expert advisers, inspectors of factories, police, etc., and a large staff of permanent officials.

The principal duties of the Home Secretary include—

(1) RELATIONS WITH THE SOVEREIGN. The duties of the Home Secretary bring him into more immediate and personal relations with the Crown than do those of his colleagues. He receives addresses and petitions which are addressed to the King in person, as distinct from the King in Council, and he arranges for their reception and answer Whenever the King's pleasure is to be communicated to an individual, to a Government Department, or to the Church, unless the matter is specially appropriate to

Scotland, foreign, colonial, military, or Indian affairs, the Home Secretary is the proper medium of communication.

(2) EXERCISE OF PARDON. The Home Secretary advises the King in the exercise of the prerogative of mercy, which is a discretionary power to remit or modify punishment for a public offence and must not interfere with private rights. In every case of reprieve, commutation, or pardon a Royal Warrant is necessary. The pardon granted may be absolute or conditional, while the reprieve may be from a death sentence to one of penal servitude for life, or detention during His Majesty's pleasure.

(3) MAINTENANCE OF THE KING'S PEACE. The Home Secretary is responsible for the preservation of the King's Peace. He recommends the appointment of Stipendiary Magistrates, Recorders, and Coroners.

He exercises a considerable amount of control over the local police forces. He sanctions the appointment of Chief Constables and any change in the strength or pay of the force. Inspectors of Constabulary are appointed and, on their reports being satisfactory, a Police Grant is made by the Home Office of half the approved net expenditure.

The making of a grant from central funds enables the Home Secretary to prescribe the organization, equipment, and discipline of the local force all over England. The Metropolitan Police Force is completely under his control. In order to preserve peace, the Home Secretary has the power to call on the military in case of necessity.

The Police (Appeals) Act, 1927, provides for a right of appeal to a Secretary of State by members of police forces who are dismissed or required to resign.

(4) THE METROPOLITAN POLICE ACT, 1933, was introduced by the Home Secretary. The aims of the Act, which consists of five sections and two schedules, are to adapt existing statutes to the reforms outlined in the White Paper issued in May, 1933, which contained the decisions of the Government on the report made by Lord Trenchard, the Commissioner of Police of the Metropolis. The general purpose is to increase the number of Assistant Commissioners of Metropolitan Police, to alter the ages of compulsory retirement in some of the higher ranks in the Force, to broaden the basis of recruitment for these ranks, and to institute a short service class of constables.

The Police College has been opened at Hendon.

(5) ADMINISTRATION OF JUSTICE. The Home Secretary advises the Crown as to the frequency with which assizes should be held. He settles the fees to be taken by Clerks of the Peace and by Clerks

to the Justices; he fixes the salary to be paid to the Clerk of the Peace in place of fees; he fixes the table of fees to be paid to prosecutors and witnesses, and he appoints the Public Prosecutor and his staff. By the Emergency Powers Act, 1920, the Home Secretary may issue Royal Proclamations, by and with the advice of the Privy Council, declaring that a state of emergency exists in certain defined circumstances. The Probation Advisory Committee and the Racecourse Betting Control Board are under his control.

(6) CONTROL OF PERSONS. The Home Secretary has to deal with various classes of persons. He has control of immigration and the supervision of aliens through the Immigration Branch. By the Naturalization of Aliens Acts, 1914 to 1922, with or without assigning any reason, he may give or withhold a certificate, whichever he thinks most conducive to the public good. He administers the laws relating to inebriates. By-laws, other than those relating to matters under the control of some other minister, made by local authorities must be submitted to him for approval.

(7) SAFEGUARDING THE PUBLIC. The Home Secretary is responsible for the safety and welfare of the subject, and thus enforces the Acts relating to burial grounds (including the granting of licences for the removal of remains). There are Inspectors of anatomy, vivisection, petroleum, explosives, dangerous drugs, and similar matters

The Departmental Committee on Fire Brigade Services issued its Report in July, 1936, and made recommendations for the re-organization and expansion of Fire Brigades in order to meet the perils of incendiary bombing. Air Raids Precaution Department was established in 1936, with a Civilian Anti Gas School.

(8) REGISTRATION AND ELECTIONS. By the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921, the powers and duties exercised and performed by the Minister of Health as successor to the Local Government Board, under the Representation of the People Act, 1918, were transferred to the Secretary of State in June, 1921, thus constituting him the central authority in regard to elections.

(9) ADMINISTRATION OF INDUSTRIAL LAWS. The Home Secretary is responsible for the administration of the extensive code of industrial laws The Factory Department supervises the operation of the Factory and Workshops Acts, and Quarries. The Home Secretary requires returns under the Employers' Liability Acts, the Workmen's Compensation Acts, and Shops Hours Acts.

An Industrial Museum is situate at 97 Horseferry Road,

Westminster, of methods, arrangements, and appliances for promoting safety, health, and welfare of industrial workers.

The Workmen's Compensation (Coal Mines) Act, 1934, requires the owners of coal mines to insure against liability for workmen's compensation and protects individual rights against the contingency of bankruptcy or the closing of collieries

The Shops Act, 1934, came into force 1st January, 1935, and affects about 400,000 young people employed in shops.

The Act applies to retail shops, wholesale shops, and warehouses occupied by retail traders and wholesale dealers, and contains important provisions

(1) for regulating the hours of employment of young persons employed about the business of these establishments; and

(2) for securing improved arrangements for the health and comfort of shop workers generally.

The provisions relating to the employment of young persons represent a great advance on the existing law. Hitherto, the only general limitation upon the hours of employment of young persons has been the limit of 74 hours a week, inclusive of meal times, applicable to young persons employed in retail shops.

Under the 1934 Act the normal working hours of young persons under 18 employed about the business of retail and wholesale shops and warehouses are limited to a maximum of 52 hours a week (exclusive of meal times) for a period of two years until 27th December, 1936, and thereafter to a maximum of 48 hours a week.

On occasions of seasonal or exceptional pressure of work, young persons—but only those between the ages of 16 and 18—are permitted to work a strictly limited amount of overtime. Records of the hours worked must be kept by the employers.

The benefits of the weekly half-holiday and prescribed meal intervals, hitherto confined to retail "shop assistants," are extended to the great majority of young persons to whom the 1934 Act applies, and provision is made to prevent the employment of young persons at night.

Special provision is made for the arrangement of hours in establishments in which a catering business or the business of selling supplies and accessories for aircraft, motor vehicles, and cycles is carried on in order to allow of greater elasticity within the general limits of the Act.

Young persons employed in retail trade elsewhere than in a shop—*e.g.*, in street trading—are included in the scope of the employment provisions of the Act.

The provisions relating to the health and comfort of shop workers generally, which also represent a considerable advance upon existing legislation, include requirements as to sanitary

accommodation, ventilation, temperature, lighting, washing facilities, and facilities for taking meals. These provisions operate for the benefit of all shop workers, adults, and young persons alike. The responsibility for the administration of the Act rests with local authorities

The Women and Young Persons Act, 1936, continued an Act which was passed in 1920 to establish the two-shift system.

(10) INSPECTION OF INSTITUTIONS. Various institutions over which the state has certain powers of control are under his jurisdiction, such as prisons and gaols (direct), industrial and reformatory (now Approved) schools (inspection only). There are also Inspectors under the Prevention of Cruelty to Animals Acts. There is a special Children's Branch.

(11) RELATIONS WITH FOREIGN POWERS. The Home Secretary ensures the observance of the Acts conferring privileges upon foreign Ambassadors and their servants, and thus preserves amicable relations with the subjects of foreign powers. He administers extraditional laws in regard to persons who have committed crimes in foreign countries and have taken refuge upon our shores.

(12) TERRITORIAL FUNCTIONS. Northern Ireland and outlying places such as the Channel Islands and the Isle of Man, which are not, from an administrative point of view, a part of the United Kingdom, and yet are not colonies, fall under his jurisdiction.

(13) SUNDAY CINEMAS The Sunday Entertainments Act, 1932, provides that the local authorities are to determine the amounts of the proceeds from Sunday performances which are to go to charity.

It also provides for the establishment of the Cinematograph Fund under the control of the Privy Council, and the Home Secretary is authorized to prescribe that a certain percentage of the amounts which the various local authorities decide is to be given to charity is to be paid to the fund The Home Secretary, in January, 1933, made the provisional regulation that the prescribed percentage for the purpose of the Act shall, as from 1st February, 1933, be 5 per cent.

The money paid into the fund is to be paid out under the supervision of the Privy Council for the purpose of encouraging the use and development of the cinematograph as a means of entertainment and instruction. Accounts of the fund are to be audited annually, and a report thereon laid before Parliament.

Although responsible for public order, the Home Secretary is by no means a Minister of the Interior in the Continental sense, for, apart from the police, he has very little to do with local

government, the supervision of which, although in part spread over different departments, is mainly concentrated in the hands of the Ministry of Health. On the other hand, he has some of the functions of a Minister of Justice.

THE ROYAL COMMISSION ON LICENSING issued its Report in 1932. The Report referred to the "spectacular" improvement in public sobriety. The Commission was in favour of public ownership. The Report did not recommend local option, but recommended that in new areas an informative poll should be taken of the inhabitants before a licence was granted.

THE BETTING AND LOTTERIES ACT, 1934, embodies the principles of the Royal Commission which was appointed in May, 1932, under the chairmanship of Sir Sidney Rowlatt, K.C., and issued an Interim Report with regard to totalisator betting in clubs and greyhound tracks on the 10th January, 1933, and a Final Report on the 8th June, 1933.

THE BETTING AND LOTTERIES ACT, 1934, provides that—

As from 1st January, 1935, small lotteries incidental to bazaars, sales of work, fetes, and similar entertainments, and private lotteries confined to the members of a society or persons working on the same premises are legalized. All other lotteries, except art union lotteries, are illegal.

Offences applicable to the Irish sweepstake and other illegal lotteries include selling or distributing tickets; being in possession of tickets for the purpose of sale or distribution; publishing or distributing any list of prizewinners or being in possession of such a list for the purpose of publishing or distributing; publishing matter that is calculated to act as an inducement to persons to participate in a lottery; bringing or inviting any person to send into Great Britain a lottery ticket for the purpose of sale or distribution.

Applications through the post for Irish sweepstake tickets will be stopped by the Postmaster-General where possible on the instructions of the Home Secretary.

The legalisation of small lotteries and private lotteries is subject to certain conditions. A small lottery must be confined to the premises on which the entertainment takes place, and tickets or chances can be sold only during the progress of the entertainment. Money prizes are prohibited in the case of small lotteries.

A private lottery concerns societies, clubs, organizations, and staffs in offices, workshops, etc. Where the lottery is among members of a society or club the promoter must have the authority in writing of the governing body of the society to run the lottery. Every ticket in a private lottery must bear the names and addresses of the promoters and other particulars.

Prize competitions in newspapers or in connection with trade or the sale of any article to the public are made illegal.

Betting. The new provisions with regard to betting on dog-racing tracks came into force on 1st July, 1935.

County and County Borough Councils are the authorities to grant licences for betting facilities on dog-racing tracks. A county council may delegate their functions to the Standing Joint Committee of Quarter Sessions and of the Council. The licensing authority must, by the end of May, fix 104 days in the year beginning on 1st July, as the appointed days for betting facilities.

If the applicants for licences in an area agree as to the days then these will be fixed. For various reasons, relating to the neighbourhood, its amenities and traffic and so forth, a licence may be refused to a new track.

Betting is restricted to the 104 days fixed and is prohibited on Good Friday, Christmas Day, and Sunday. It is limited to eight races a day and four continuous hours. On four special days fixed by the authority there may be sixteen races within an aggregate period of eight hours. The appointed days will be the same in the whole of their area.

The totalisator is legalized for the dog races on these days At the same time, the occupier of the track has to provide space for bookmakers, but he is forbidden to have an interest in bookmaking there.

Betting with young persons under the age of 18, or their employment in betting business, is prohibited.

The Scottish Office

It was not until 1885 that a separate Secretary for Scotland was appointed. In that year there were handed over to the new official, who was created by Act of Parliament, certain administrative duties hitherto performed by the Treasury, the Home Office, the Local Government Board, and the Committee of Council on Education. The Secretary of State for Scotland is Keeper of the Great Seal of Scotland

All private legislation in Scotland commences by way of Provisional Order. This Order may be changed into a Private Bill if the Chairmen of the Lords and Commons Committees so decide. They make the change if they are of opinion that the matters dealt with are of national as opposed to local interest. If opposed, the Provisional Order is considered in Scotland before a joint committee of both Houses of Parliament. If they pass it, the Order is then taken up by the Secretary of State for Scotland, who introduces a confirming Bill into the House, and after procedure there it becomes an Act. If the Provisional Order is not

opposed it is, subject to such alterations as the Secretary may require, introduced by him into the House and proceeds in the way above-mentioned.

Scotland retains its own judicial system and its own law officers, a Lord-Advocate and a Solicitor-General. The Lord-Advocate is the chief law officer, corresponding to the English Attorney-General. By the Secretary of State for Scotland Act, 1926, the status of the Secretary for Scotland was raised to that of one of His Majesty's principal Secretaries of State, and under its terms a Parliamentary Under-Secretary is appointed.

The Reorganization of Offices (Scotland) Act, 1928, transformed three Scottish Boards into Departments under the direction of the Secretary of State for Scotland. This means that they became departments of the Whitehall type, with civil servants at their head instead of politically-appointed chairmen. The Scottish Board of Health, the Board of Agriculture for Scotland, and the Prison Commissioners for Scotland ceased to exist, and the powers and duties of the Boards (in which expression the Prison Commissioners for Scotland are included) were respectively transferred to and vested in a Department of Health for Scotland, a Department of Agriculture for Scotland, and a Prisons Department for Scotland, acting under the control and direction of the Secretary of State, and consisting of a secretary and such other officers and servants as the Secretary of State, with the consent of the Treasury, may determine.

THE ROYAL COMMISSION ON THE LICENSING LAWS OF SCOTLAND issued its reports in July, 1931. The Majority Report proposed no revolutionary changes in the general licensing system. but made over seventy recommendations for amending the existing law.

IRELAND

The Irish Office

The Irish Executive was formerly vested in the Lord-Lieutenant in Council. The Council referred to was that of the Privy Council of Ireland, which was a smaller body than that of England.

Present Administration

In present circumstances, Ireland comprises two distinct Governments and systems of administration, *i.e.*, the Government of Northern Ireland and the Government of the Irish Free State.

The systems of government are entirely different: the Government of Northern Ireland may be said to be a "provincial" Government The formal medium of communication between the Sovereign and Northern Ireland is the Home Secretary. The Irish

Free State possesses Dominion status within the Empire, for whom the Secretary of State for the Dominions is responsible to Parliament.

Before the respective features of the two States and Governments are dealt with, a brief sketch will be given of the circumstances in which these two systems of government were established.

Under the Government of Ireland Act, 1920, passed by the Imperial Parliament, provision was made for the establishment of separate Parliaments for Northern and Southern Ireland respectively. Under the Act, Northern Ireland comprised the six Parliamentary Counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the Parliamentary Boroughs of Belfast and Londonderry. Southern Ireland comprised the remainder of Ireland.

The Act became operative in Northern Ireland but was not acceptable to Southern Ireland, and after further negotiations the Irish Free State (Agreement) Act, 1922, was passed by the Imperial Parliament, under which Southern Ireland was constituted as the Irish Free State with full Dominion status and powers.

Northern Ireland

Under the Government of Ireland Act, 1920, the legislative powers in Northern Ireland were vested in a Parliament consisting of His Majesty, the Senate, and the House of Commons.

THE SENATE consists of 26 members elected for the most part by the House of Commons.

THE HOUSE OF COMMONS consists of 52 members assigned in varying proportions to the different Counties and County Boroughs, and elected since 1929 for single-member constituencies, save in the case of the election of members representing the Queen's University of Belfast, where the principle of Proportional Representation still operates.

THE GOVERNMENT comprises the Prime Minister, the Minister of Finance, Minister of Home Affairs, Minister of Labour, Minister of Education, Minister of Agriculture and Minister of Commerce.

Under the Act of 1920 the Imperial Parliament has reserved certain services operating in Northern Ireland as Imperial services, *e.g.*, the Crown, the making of peace and war, the Navy, Army, Air Force, Treaties with other States, dignities and titles of honour, coinage, etc. The Imperial Government also is responsible for the collection of taxation in Northern Ireland, although the Parliament of Northern Ireland has power under certain circumstances to raise special taxes. The Supreme Courts in Northern Ireland are also a reserved service. Apart from

these reserved and Imperial services, the Government of Northern Ireland administers all its services through the Department concerned. Northern Ireland is entitled to send representatives to the Imperial Parliament to watch its interests Northern Ireland also pays each year a contribution to the Imperial Government to cover Imperial services, as specified in the Act of 1920

CHAPTER XVI

THE MINISTRY OF HEALTH

CENTRAL GOVERNMENT is the determination of policy and principle. Local Government is the application of those principles to the peculiarities of local fact.

LOCAL GOVERNMENT is that part of the government of a nation or state which deals mainly with such matters as concern the inhabitants of a particular district or place, and which it is thought desirable should be administered by local authorities, subordinate to the Central Government.

The LOCAL GOVERNMENT BOARD was the successor of the Poor Law Board which, in 1848, replaced the Commissioners who were appointed under the Poor Law Amendment Act, 1834, and of the General Board of Health, which was created under the Public Health Act, 1848. The powers of the latter Board were transferred to the Home Office and the Privy Council in 1858 and then to the Local Government Board on its creation in 1871. The work of the Local Government Board was transferred to the Ministry of Health on 1st July, 1919.

Ministry of Health Act, 1919

The object of the Ministry of Health Act, 1919, was to consolidate in one department, and under one Minister—

(*a*) All the powers and duties of the Local Government Board.

(*b*) All the powers and duties of the Insurance Commissioners and the Welsh Insurance Commissioners.

(*c*) All the powers of the Board of Education with respect to attending to the health of expectant and nursing mothers, and of children who have not attained the age of five years, and are not in attendance at schools recognized by the Board of Education. The medical inspection and treatment of children and young persons.

(*d*) All the powers of the Privy Council and the Lord President of the Council under the Midwives Acts, 1902 and 1918.

(*e*) Such powers of supervising the administration of Part I of the Children Act, 1908 (which relates to infant life protection), as had heretofore been exercised by the Secretary of State.

The Act also contains powers to bring, on a date to be determined, under the control of the department, (i) the care of sick soldiers (now undertaken by the Ministry of Pensions), and

(ii) the control of lunacy. The latter was effected by the transfer of the Board of Control from the Home Office in May, 1920.

By Orders in Council dated 9th November, 1920, provision was made (i) for the transfer of certain powers relating to gas supply from the Ministry of Health to the Board of Trade, and (ii) for the transfer from the Board of Trade to the Ministry of Health of all the powers and duties under the Gas and Water Works Facilities Acts, 1870 and 1873, in relation to water undertakings.

The Act also empowers His Majesty by Order in Council to transfer from the Ministry of Health to any other Government Department any of the powers and duties of the Minister which appear to His Majesty not to relate to matters affecting or incidental to the health of the people. By the Ministry of Health (Registration and Elections Transfer of Powers) Order, 1921, the powers and duties exercised and performed by the Ministry of Health as successors of the Local Government Board under the Representation of the People Act, 1918, were transferred to the Home Office.

ADMINISTRATION. The Minister of Health is assisted by a Parliamentary Secretary and on the Civil Service side by a Secretary, Deputy Secretary, Chief Medical Officer, Controller of Health Insurance, Solicitor and Legal Adviser, Accountant General, Director of the Local Government Division, Director of Establishments, Director of Housing and Planning Division, Principal Assistant Secretary, Assistant Secretaries, Statistical Officer, Principals and a staff of Inspectors and technical and clerical assistants.

The Ministry is divided into the following Administrative Divisions: I. Local Government Administration; II. House Production, Slum Clearance and Town Planning; III. Health Services, Food, Infectious Disease Prevention, Blind; IV. Poor Law, Old Age Pensions, Superannuation, etc.; V. General Health Questions and General Practitioner Services; VI. Establishment and Intelligence; VII. Audit, Accounts, Rating and Assessment, Statistics. There is also an Intelligence and Public Relations Department under a Public Relations Officer.

CONSULTATIVE COUNCILS were established on 14th July, 1919, to give advice and assistance on matters relating to—

(1) Medical and allied services;
(2) National Health Insurance;
(3) Local health administration;
(4) General health questions.

Powers and Duties

(1) PUBLIC HEALTH ADMINISTRATION secures the best attainable health of each member of the community so far as this is or

can be secured by the action of local or central authorities concerned with any part of government. Copies of all annual reports of local Medical Officer of Health must be sent to the Minister.

Local Government and Public Health Enactments A Committee on the Consolidation of these Acts was appointed in December, 1930. The first Interim Report was issued in March, 1933, and resulted in the passing of the Local Government Act, 1933. The Second Interim Report was issued in 1936, and has resulted in the passing of the Public Health Act, 1936, which is dealt with in *Outlines of Local Government*· Twelfth Edition (Pitman).

(2) PUBLIC ASSISTANCE ADMINISTRATION. The Ministry of Health is responsible for the administration of the Poor Laws. It supervises the various local authorities by means of prescriptions of duties under statutes, by circulars of advice, by inspections, inquiries, statistical returns, and by audits. Its approval is necessary for the amendment of schemes of administration.

(3) LOCAL FINANCIAL ADMINISTRATION. All private and local Bills in Parliament are examined by the Minister and reported upon by him. The Audit Staff, under the Chief Inspector, is responsible for the audit of the Accounts of local authorities except certain accounts of most borough councils. The auditors possess the right to compel the attendance of persons, the production of documents, and the right of disallowance and surcharge. The Minister is responsible for the calculation and adjustments necessary for the payment of the General Exchequer Contribution under the Local Government Act, 1929.

(4) THE INSURANCE DEPARTMENT under the Controller of Health Insurance is responsible for the administration of the National Health Insurance Acts.

(5) THE OLD AGE PENSIONS BRANCH is responsible for the Old Age Pensions Acts and the Widows', Orphans' and Old Age Contributory Pensions Acts, and undertakes the verification of claims.

(6) HOUSING AND PLANNING. The Minister is responsible for the Housing Policy of the Government as reflected in Housing Legislation. He controls the subsidies payable to local authorities. He exercises control over town and country planning schemes by issuing Orders and Model Clauses and hears and decides appeals upon development schemes. In this he is assisted by Advisory Committees.

(7) MISCELLANEOUS DUTIES include approval for the sale of corporate land; granting urban powers to rural authorities, and the issue of Statutory Rules, Orders and Regulations.

(8) CENTRAL CONTROL of local authorities has become a question of paramount importance. The passing of such Acts as the Board

of Guardians (Default) Act, 1926, and the Audit (Local Authorities) Act, 1927 (both of which are now incorporated in the Local Government Act, 1933), and such decisions as that of the House of Lords, 1925, *ex parte* Hopwood (*Roberts* v. *Hopwood and others*) show that the tendency is towards a serious increase in the powers of the central authority. For these purposes there is a staff of inspectors who have power to call witnesses and hear evidence upon oath.

THE GENERAL REGISTER OFFICE is under the control of the Registrar-General. The modern system of registration dates from 1836, when the first Registrar-General was appointed. By the Act of 1874, registration was made compulsory in England and Wales. This department is responsible for the registration of births, deaths, and marriages in England and Wales, and the preparation of vital statistics. It is the duty of the Superintendent Registrar to verify all entries of births, deaths, and marriages, and to forward them quarterly to the Registrar-General.

The Local Government Act, 1929, Part III, provides for each administrative county and county borough to be divided into districts and sub-districts under the control of Superintendent Registrars and other officers as determined by a scheme prepared by the county or county borough council concerned and approved by the Minister of Health. The Clerk of the Council in each case exercises general supervision over the administration of the Registration Acts in accordance with the schemes. In the administrative County of London the Common Council of the City of London and the metropolitan borough councils are the authorities for registration purposes. Additional duties have been added by the Births and Deaths Registration Act, 1926, the Legitimacy Act, 1926, and the Adoption of Children Act, 1926. The General Register Office is also responsible for the arrangements of the Census of population.

THE BOARD OF CONTROL consists of a Chairman and four Senior Commissioners. It is responsible for the central supervision of persons of unsound mind and mental defectives. It was established under the Lunacy Act, 1845, as the Lunacy Commission. Its name was changed to the Board of Control under the Mental Deficiency Act, 1913, and it was reconstituted under the Mental Treatment Act, 1930.

CENTRAL VALUATION COMMITTEE. This Committee was set up under the Rating and Valuation Act, 1925. Its object is to promote uniformity and remove inequalities in the system of valuation of the whole country. Every assessment committee has to report to it annually, and it must also report annually to the

Minister of Health. The Committee makes representations to the Minister of Health respecting procedure and alteration of law, *e.g.*, Rating of Playing Fields.

TRAINING AND RECRUITMENT OF LOCAL GOVERNMENT OFFICERS. The Departmental Committee appointed by the Minister of Health following recommendations made by the Royal Commission on Local Government (1923–29) reported in January, 1934.

In order to secure proper consideration of staff matters, the committee recommend that every local authority should entrust to one committee all questions affecting recruitment, qualifications, training, and promotion of officers. In addition they urge that a standing central advisory committee should be established.

The committee point out that several of their proposals require the co-operation of a central body in order to become fully effective (*e.g.*, joint competitive entrance examinations, the establishment of an administrative qualifying examination, investigation of technical qualifications), and they recommend that the associations of local authorities and the London County Council should set up a standing committee to investigate and advise on all questions affecting the local government service.

The committee regard the absence of a central organization as "one of the most serious defects in the existing system," and they consider that substantial progress depends on the establishment of this committee.

The committee state that the local government service maintains to-day a high standard, and they had heard little serious criticism of officers. Regarding recruiting and training, however, they say: "Standards are uneven and no consistent effort is made by local authorities as a whole to secure the best persons for their service, and to make the best use of them. In view of the burdens which local authorities are carrying this lack of a considered policy towards the local government service is short-sighted and wasteful."

WATER SUPPLY SURVEY. Following the announcement which he made in the House of Commons on 7th December, 1934, of an investigation of the whole of Britain's water supply system, Sir Hilton Young (Minister of Health) stated that the comprehensive survey designed would be carried out under the supervision of an independent committee appointed with the co-operation of the Department of Scientific and Industrial Research and other departments. The Committee would start with the information already collected by the Ministry of Health and the Geological Survey.

The task of the Survey Committee would be to guide the survey in the collection of information, to advise on its progress, and on measures necessary from time to time for its improvement. The survey would provide that sure basis of knowledge which was needed for progress in another sphere—improvement in the organization and of the geographical basis of our system of water administration.

In his statement in the House of Commons, the Minister said the survey committee would be composed of persons outside Government departments and in the constitution of the committee attention would be paid to the inclusion of both scientific and practical experience. The composition of the committee was announced in February, 1935.

The subject of Local Government is dealt with in detail in *Outlines of Local Government* and more fully in *Local Government of the United Kingdom* (Pitman). Reference could also be made to *The Law of Housing and Planning*, *Social Administration including the Poor Law*, *Public Assistance* (Pitman).

CHAPTER XVII

THE BOARD OF EDUCATION

EDUCATION is that function which will develop the faculties of the individual in such a way that he will not only be able to fulfil his allotted task as an ordinary tradesman or professional man, but will also become best fitted to serve the community in which he dwells, and to render that service which shall enable him to leave the world better than he found it. Education makes, or should make, the individual realize his highest potentialities.

Public expenditure on Education may be justified on moral, economic, and social grounds; on moral grounds because it acts as a deterrent against vice and crime; on economic grounds because knowledge increases skill and ability, and should result in increased output and wealth; on social grounds because, so far as is consistent with natural ability, it tends towards equality of opportunity.

Education is derived from three broad sources: From nature by the development of organism and faculties; from men in the manner in which we avail ourselves of our faculties; from circumstances in view of the benefit which is derived from experience.

HISTORICAL. For about eleven hundred years the Church was responsible for education. Prior to the Renaissance there were three types of schools which developed in this country, viz., monastic, endowed grammar, and gild schools.

The invention of printing in the fifteenth century, and the Reformation in the sixteenth century had considerable influence in regard to the encouragement of learning. The period of the Renaissance of the early part of the sixteenth century led to the intellectual movement of that time.

During the Stuart Period there was a steady reaction, and intellectually this was probably the darkest period in English history.

In 1698 commenced a new era with the formation of the Society for Promoting Christian Knowledge, with a three-fold object: Education of the poor at home; the reclaiming of those who had erred from Christianity (origin of Home Missions); and the religious teaching in the Plantations, as the Colonies were then called (origin of Foreign Missions).

John Wesley was born in 1703, and together with Whitefield, awakened the moral conscience of the country.

In 1769 Hannah Ball started a Sunday School at High Wycombe, which was probably the first in the country. James Hay, in 1775, opened a school at Little Lever in Lancashire. In 1780 Robert Raikes opened a Sunday School in Gloucester, after

many years' devoted attention to the prisoners in his native city. Sir Robert Peel's Factory Act, 1802, provided for the education of parish apprentices in reading, writing, and arithmetic. In 1818 John Pounds opened a ragged school.

Sunday Schools rapidly developed, and by the early part of the nineteenth century there were 250,000 scholars, principally adults who worked in factories. It was an outward indication of an inward craving for light and learning on the part of the general body of the community.

The most notable effort made to further popular education was the introduction of the monitorial system, the origin of which was claimed by Andrew Bell and Joseph Lancaster towards the close of the eighteenth century. In 1808 the Nonconformist followers of Joseph Lancaster founded the Royal Lancastrian Society, later known as the British and Foreign Schools Society. The State Church was alarmed at the growth of Lancaster's Nonconformist schools, and, in 1811, founded the National Society for the Education of Children of the Poor according to the Principles of the Church of England. This Society took over the schools established by Andrew Bell. In 1828 Thomas Arnold went to Rugby, and created a new public school spirit, which is well illustrated in *Tom Brown's Schooldays.*

Department of Education

State support first came in the form of a Minute dated 30th August, 1833, of the Lords Commissioners of H.M Treasury, making a grant of £20,000 towards funds for the erection of school houses. The amount was applied in aiding local effort through the British and Foreign Schools Society and the National Society, which were required to raise a similar amount from local voluntary sources.

By 1839 the grant, which had become annual, amounted to £30,000, and in that year the Committee of the Privy Council on Education was constituted to administer the grant. At the same time, inspectors of schools were appointed.

The Treasury Minutes continued to be issued until 1856 without a special Act of Parliament. In that year the office of Vice-President of the Privy Council for Education was created, with the result that the administration of grants came under the control of a minister responsible to Parliament.

The period from 1856 to 1870 was one of considerable political activity. No legislation was attempted for some time, but in a Minute of 1861, the Right Hon. Robert Lowe, at that time Vice-President of the Committee, published a Revised Code of all the Minutes issued by the Department. From that time the Code was reprinted every year. This introduced the principle of

" payment by results." The Education Act, 1870, provided for the appointment of Commissioners to inquire into the condition of education in school districts. Where there existed an educational deficiency, School Boards were to be elected in towns by the burgesses and elsewhere by the ratepayers.

Board of Education

The Board of Education was established by the Board of Education Act, 1899. It consists of a President and the following *ex-officio* members: the Lord President of the Privy Council, the Principal Secretaries of State, the First Lord of the Treasury, and the Chancellor of the Exchequer.

By this Act the Education Department and the Department of Science and Art were merged into the Board of Education, which administers the Education Acts in England and Wales Certain educational functions of the Charity Commissioners and the Ministry of Agriculture and Fisheries were also transferred to the Board of Education.

ADMINISTRATION. The Board never meets, the executive work being in the hands of the President and the Secretariat. The latter includes a Parliamentary Secretary, who is a politician, a Permanent Secretary, a Deputy Secretary, a Permanent Secretary of Welsh Department, Principal Assistant Secretary (Elementary Schools), Principal Assistant Secretary (Secondary Schools), and a Chief Medical Officer, who is also the Chief Medical Officer of the Ministry of Health. There is also a principal assistant secretary for technical and continuation schools, etc Principals are in charge of territorial divisions, and are assisted by assistant principals, and an executive and clerical staff.

POWERS AND DUTIES. The chief function of the Board of Education is the superintendence of education, which may be considered as a service which exists for the national welfare but is locally administered. The means by which the Board seeks to attain its objectives are by: (1) regulations, (2) inspection, (3) the training of teachers and regulation of staffing, (4) the dissemination of information and the initiation of machinery for inquiry and consultation, (5) grants, and (6) approval of administrative schemes.

The bulk of the work of the Board is in relation to elementary, secondary, and technical education, and is carried on in the Territorial Divisions.

There are also the following branches, viz.—

(1) *Finance Branch* is under an Accountant-General.

(2) *Legal Branch* possesses a Legal Adviser, with assistant legal advisers and several legal assistants.

(3) *Pension Awards Division* under an Assistant Secretary.

(4) *Medical Branch*, established under the Education (Administrative Provisions) Act, 1907, is under the control of the Chief Medical Officer, who is joint Chief Medical Officer of the Ministry of Health, and is assisted by an administrative and medical staff.

(5) *Library* under a Librarian.

(6) *Architects' Office* is for the purpose of approving the plans of schools and other educational institutions in accordance with the regulations of the Board.

(7) *Training, etc., of Teachers, etc., Division.*

(8) *Establishment Branch* is under the Director of Establishments.

(9) *Welsh Department*, under the control of a Permanent Secretary, administers the Acts in relation to Wales and the Welsh Intermediate Education Act, 1889.

The Executive Staff is under the control of Accountants, Principal Staff Officers, and Executive Officers.

The Board of Education is also responsible for the Victoria and Albert Museum, the Science Museum, and the Royal College of Art, all at South Kensington.

THE INSPECTORATE constitutes an important feature of the work of the Board. The staff is divided into divisions. The Inspectors are responsible for—

(1) *Elementary Schools*, including the provision and inspection of elementary schools.

(2) *Secondary Schools*, including the inspection of secondary education and the control of endowments.

(3) *Technical and Continuation Schools*, including technical institutes and evening schools, schools of art, Victoria and Albert Museum, and the Royal College of Art.

(4) *Training Colleges.*

(5) *Domestic Subjects.*

(6) *Schools of Art, Art Classes, etc.*

(7) *Special Schools.*

(8) *Physical Exercises.*

There are also Inspectors for Wales.

CONSULTATIVE COMMITTEE. The Board is assisted by a Consultative Committee of eighteen members appointed for six years, consisting to the extent of not less than two-thirds of persons qualified to represent the views of Universities and other bodies interested in education. There are also "Burnham" Committees (Primary, Secondary, and Technical) to deal with salaries.

During recent years the Board of Education has kept itself in touch with the views of teachers with regard to much of the work by consulting the Teachers Registration Council, now the Royal Society of Teachers, which was constituted by Order in

Council, 29th February, 1912. In particular matters it has also relations: (*a*) for elementary education with the National Union of Teachers; (*b*) for secondary education with the Joint Committee of the Four Secondary Associations; and (*c*) for technical and art education with the Joint Committee of the Three Technical and Art Associations.

FUTURE PROGRESS Many committees, Government and unofficial, have dealt with the problems. Amongst those committees there stand out most prominently—

(1) *The Board of Education's Consultative Committee*, which dealt with adolescent education, and suggested a new nomenclature governing post-primary schools, *e g.*, present secondary schools to be called grammar schools.

(2) *The Malcolm Committee*, which dealt with administrative and educational features of the linking of education and industry.

An Advisory Committee under the Chairmanship of Lord Shaftesbury has been set up to examine the Malcolm Report. It consists of representatives of the Ministry of Labour, Local Education Authorities, Teachers, Employers' Organizations and Trades Union Congress

(3) *The Inquiry into Technical Education*, which commenced its work under the late Right Hon. Lord Emmott, and was composed of representatives of all the principal educational and industrial bodies in the country.

(4) *The Balfour Committee* on Trade and Industry.

STUDENTS FROM OVERSEAS. In July, 1933, the President of the Board of Education and the President of the Board of Trade appointed a committee with the following terms of reference: "To consider what further steps could usefully be taken to encourage suitable students to come to the United Kingdom for education and training—general, commercial, or technical, and to make recommendations."

THE EDUCATION ACT, 1936, raises the school age to 15, but provides for exemption from school attendance for children over 14 who obtain beneficial employment.

ACCOUNTS The accounts of local education authorities are audited by the District Auditor of the Ministry of Health, and not by the Board of Education.

Loans are subject to the approval of the Ministry of Health and not the Board of Education.

Other forms of education are provided under other Departments of the Government, *e g*, the Air Ministry

For details of the Education Acts, see *Local Government of the United Kingdom* (Pitman).

CHAPTER XVIII

THE MINISTRY OF LABOUR

THE MINISTRY OF LABOUR was created under the New Ministries and Secretaries Act, 1916, and there were transferred to it the powers and duties of the Board of Trade under the Conciliation Act, 1896, the Labour Exchange Act, 1909, Trade Boards Act, 1909, the Unemployment Insurance Acts, and Part I of the Ministry of Munitions of War Act, 1915. The last-mentioned Act has now lapsed.

Secondly, there are relegated to the Minister of Labour such other powers and duties of the Board of Trade or of any other Government department or authority relating to labour and industry, whether conferred by statute or otherwise, as His Majesty may by Order in Council transfer to him or authorize him to exercise or perform concurrently with or in consultation with the Government department or authority concerned.

The Ministry publishes monthly *The Ministry of Labour Gazette*, which contains, *inter alia*, the retail prices index number and the cost of living figures. It also publishes monthly the *Local Unemployment Index* to subscribers who desire to be acquainted with the extent of unemployment in the various localities.

ADMINISTRATION. The Minister is assisted by a Parliamentary Secretary, a Permanent Secretary, a Deputy Secretary, Principal Assistant Secretary, Principals, a Solicitor, and an Accountant-General.

The principal departments include—

(1) Unemployment Insurance Department under a Principal Assistant Secretary.

(2) Employment and Training Department under a Principal Assistant Secretary.

(3) Unemployment Assistance Division under a Principal.

(4) Services and Establishments Department under a Director.

(5) General Department, including (i) Statistics Branch; (ii) Trade Boards Branch; (iii) Office of Trade Boards; (iv) Industrial Relations Branch; (v) International Labour Branch.

(6) Finance Department under the Accountant-General, viz.: (i) Headquarters; (ii) Claims and Record Office; (iii) Local Finance Offices.

(7) Solicitor's Department.

There are also independent offices of the (1) Umpire; (2) Industrial Court; (3) Joint Substitution Board; Unemployment Assistance Board.

The principal work of the Ministry has reference to the promotion of Industrial Relations, Employment Exchanges, Trade Boards, and Unemployment Insurance.

Employment Exchanges

An Employment Exchange (until October, 1916, known as a Labour Exchange) is any office or place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople, and workpeople who seek employment.

The Objects of the Labour Exchange Act, 1909, include the provision of a voluntary market for labour which had in many trades remained unprovided for. The provision of such a market prevents waste of time on the part of both employers and workpeople.

This has resulted in a reduction of casual labour and vagrancy. The creation of these Labour Exchanges made the provision of statistics relative to the conditions of labour an important feature of their work. They have also made possible the provision of machinery for insurance against unemployment.

The Guiding Principles of such a system are that the Exchanges are—

(*a*) National in character, covering, as they do, the whole of the United Kingdom, and being administered by the Central Government.

(*b*) They are industrial and not charitable.

(*c*) They are free and voluntary to both employers and workpeople.

(*d*) They are impartial as between both parties.

The Employment Exchanges are administered by the Ministry of Labour, which may—

(1) Establish and maintain exchanges in such places as it thinks fit.

(2) Assist exchanges maintained by other authorities and persons.

(3) Co-operate with other authorities and persons.

(4) Take over employment exchanges by agreement with the authority or person by whom the employment exchanges are maintained.

(5) By such other means as it thinks fit, collect and furnish information as to employers requiring workpeople, and workpeople seeking employment.

Choice of Employment by local education authorities was provided for under statute in 1910, and was modified as the result of the Chelmsford Report in 1921. The Committee on Education and Industry, which reported in 1927, recommended that the Ministry should assume responsibility for the two services of choice of employment and unemployment insurance of juveniles This was effected by Order as from 19th September, 1927.

The Industrial Transference Board was set up in 1927 providing facilities for men desiring to transfer to other areas and trades.

THE INDUSTRIAL RELATIONS DIVISION conducts proceedings under the Conciliation Act, 1896, and the Industrial Courts Act, 1919.

THE INTERNATIONAL LABOUR DIVISION. (See also page 320.) An officer of the Ministry attends the sessions of the Governing Body of the International Labour Office.

Trade Boards

The object of Trade Boards is to remedy existing abuses in regard to sweated industries. Sweating is understood to mean that the work is paid for at a rate which, in the conditions under which many of the workers do it, yields to them an income which is insufficient to enable an adult person to obtain proper food, clothing, and house accommodation.

The Trade Boards Acts, 1909 and 1918, are administered by the Ministry of Labour, whose officers have power to enter workshops and inspect wages sheets, and have the same power to take and conduct proceedings as is possessed by Factory Inspectors.

The Acts applied originally to all workers in the following trades—

(1) Ready-made and wholesale-bespoke tailoring, and any other branch to which the Ministry of Labour considers that the system of manufacture is similar to that prevailing in the wholesale trade.

(2) The making of boxes or parts thereof made wholly or partially of paper, cardboard, chip, or similar material

(3) Machine-made lace, and net finishing, and mending or darning operations of lace-curtain finishing

(4) Hammered and dollied, or tommied chain-making.

The Ministry of Labour may now make a Provisional Order applying the 1909 Act to any specified trade to which it does not at that time apply, if satisfied—

(*a*) That the rate of wages in any branch of the trade is exceptionally low, as compared with other employments ; and

(*b*) That the other circumstances of the trade are such as render the application of the Acts to the trade expedient.

In accordance with this provision, the Trade Boards Provisional Order Confirmation Act, 1913, extended the application of the Act to the following trades, viz.: sugar confectionery and fruit preserving, shirt making, hollow-ware making (including boxes and canisters), linen and cotton embroidery. By the Trades Boards Act, 1918, the Trade Boards Act, 1909, is to apply to any other trades to which it has been applied by a Provisional Order or a Special Order made under the Act by the Minister of Labour, *e.g.*, to Laundry Workers in 1913, and to Milk Distributors in 1919.

Constitution of Trade Boards. Trade Boards consist of representatives of employers and workers in equal numbers, together with members appointed by the Ministry of Labour. These must at no time exceed the whole of the representative members in number.

Women are eligible both as appointed and as representative members.

Duties of Trade Boards. Since the passing of the Trade Boards Act, 1918, a Trade Board has power to fix a general trade rate of wages for time-work.

It may also fix—

(*a*) A general minimum piece rate of wages for piece-work.

(*b*) A minimum time rate to apply in the case of workers employed on piece-work.

(*c*) A guaranteed time rate (whether a time rate or a piece rate) to apply in substitution for a minimum rate which would otherwise be applicable.

(*d*) An overtime rate.

The Trade Boards are authorized to apply such rates either universally to the trade, or to any special process, or to any class of workers, or to any special area.

Trade Boards may establish District Trade Committees, and refer to them any matter which they think expedient, other than special minimum piece rates.

The Agricultural Wages (Regulation) Act, 1924, has extended the principle to agriculture. (*See* page 124.)

Further particulars respecting Employment Exchanges and Trade Boards are given in *Social Administration* (Pitman).

Unemployment Insurance

A compulsory system of insurance against unemployment was contained in the recommendations of the Majority and Minority Commissioners who reported in 1909 upon the Poor Laws and the Relief of Distress. The subject constituted Part II of the National Insurance Act, 1911. It applied originally to a limited number of industries, but the conditions of benefit and other

regulations have been amended from time to time, principally due to the economic conditions arising out of the Great War.

THE UNEMPLOYMENT INSURANCE ACT, 1920, codified the law on the subject It was amended repeatedly to meet the present industrial crisis, and the law has been consolidated in the Unemployment Insurance Act, 1935.

BLANESBURGH COMMITTEE. The reference to this Committee, which was appointed in November, 1925, was "to consider, in the light of experience gained in the working of the Unemployment Insurance Scheme, what changes in the scheme, if any, ought to be made." The Committee reported in 1927 that "an unemployment insurance scheme, compulsory, and covering at least the persons at present covered by the State scheme, should be a permanent feature of our code of social legislation." Such a scheme, they considered, should fulfil six conditions, viz.—

(1) The workers' contribution must be moderate in amount.
(2) The scheme must not, by the extent of the benefit promised, tempt the insured contributor to improvidence when in receipt of good pay.
(3) It should provide benefits definitely less in amount than the general labourer's rate of wage, so that there may be no temptation to prefer benefit to work.
(4) It must not interfere unduly with the mobility of labour in this country.
(5) It must not deter from emigration those who would be benefited by a life overseas.
(6) Subject to these conditions, the scheme should be made as attractive to the insured contributor as, on a strictly actuarial basis, it is possible to make it.

The recommendations were embodied in the Unemployment Insurance Act, 1927.

COURTS OF REFEREES are appointed by the Minister under the Unemployment Insurance Act, 1935. A Court consists of a Chairman appointed by the Minister and one person drawn from the employers' panel and one person drawn from the insured contributors' panel, and duly summoned to serve on the Court. In connection with claims to unemployment insurance benefit, provision is made for disputed claims being referred in the first instance to local Courts of Referees and the Chief Insurance Officer.

The Umpire is appointed by His Majesty for the purpose of determining any matters under dispute between the insurance officer, the insured person, and the Court of Referees. The decision of the umpire is final and conclusive.

A ROYAL COMMISSION, under the Chairmanship of Judge Holman Gregory, was appointed to report on the working of the Scheme in 1930. It issued an Interim Report in June, 1931, which stated that—

(1) During the last twenty years there has been a gradual and unco-ordinated transfer from local to central government of the whole problem of able-bodied unemployed.

(2) The Insurance Fund was solvent and self-supporting up to 1920 and, with exceptions, to 1924.

(3) It would be unsafe to assume any trend in the direction of improved average employment.

(4) There is a high minimum of unemployment of one million due to obstinate factors which do not respond to ordinary trade improvement.

(5) The progressive relaxation of the original principles of insurance has practically amounted to its abandonment. A maximum limit to benefit and relationship between contributions and benefits were originally basic principles.

(6) The method of borrowing vast sums for payment of benefits obliterates the effect of the Sinking Fund, involves the impairment of government credit and represents the ordinary and well-recognized sign of an unbalanced Budget.

(7) The relationship of payments to beneficiaries to their contributions is essential to the principle of unemployment insurance and facilitates payment or proof of unemployment without inquiry into means or needs.

(8) There is no warrant for the assumption that the benefit has ever been intended to supply full maintenance, and present rates were fixed when unemployment was less and prices higher.

(9) The Act of 1930 considerably widened the basis of eligibility for benefits by repealing the statutory conditions requiring the claimant to prove that he was genuinely seeking work and had been employed during the past two years in insurable employment.

(10) The numbers drawing transitional benefit increased from 120,000 in May, 1929, to 410,000 in May, 1931, and further increases were anticipated.

Recommendations—

(1) Limitation of period of benefit to 26 weeks.

(2) Increase in rates of contribution so that the three parties pay 9d. each.

(3) Reduction in rates of benefit and dependant's allowance by normally 10 per cent.

(4) Restriction of transitional benefit right—30 contributions to have been paid in past 6 years—means inquiry in suitable cases.

(5) Abuses to be corrected—

(i) Refusal of suitable work to be a disqualification.
(ii) Restriction of benefits to—
(*a*) Intermittent workers.
(*b*) Casual and short time workers.
(*c*) Married women.
(*d*) Seasonal workers.

THE UNEMPLOYMENT INSURANCE (No. 3) ACT, 1931, authorized the issue of the Anomalies Regulations for the purpose of removing anomalies which had arisen in the operation of the Act in connection with the classes of persons named.

THE UNEMPLOYMENT ACT, 1934, contained three Parts. Part I dealt with Unemployment Insurance, Part II dealt with Unemployment Assistance, Part III contained supplementary and transitional provisions. Schedules I to V, and Part I of Schedule II, related to Part I of the Act.

Schedules VI to VII and Part II of Schedule IX related to Part I of the Act. Schedules VI to VIII and Part II of Schedule IX related to Part II of the Act. The whole Act is entitled the Unemployment Act, 1934. Part I of the Act, together with Schedules I to V may be cited separately as the Unemployment Insurance Act, 1934.

THE UNEMPLOYMENT ACT, 1935. The whole law relating to unemployment insurance has been consolidated in the Unemployment Insurance Act, 1935. No less than eleven entire Acts and parts of three others are repealed and replaced by this much-needed consolidating enactment.

Most of Part I of the Act of 1934 came into operation on the 26th July, 1934. Part II, theoretically, came into force on the passing of the Act, namely, 28th June, 1934, and this enabled the Minister of Labour to set up the Unemployment Assistance Board and the Board to set to work. But Section 59 provided for the continuance of determination with respect to transitional benefit until the "first appointed day" and no application for unemployment assistance was made before that day. Also, by Section 61, and subject to rules made by the Unemployment Assistance Board, no application for an allowance shall be taken into consideration before the "second appointed day" unless the applicant would have been entitled to transitional payments. The provisions preventing the grant of poor relief to unemployed persons within the scope of Part II of the Act do not apply before the second appointed day except so far as they prohibit outdoor relief to persons whose needs have been taken into consideration in granting unemployment assistance allowance.

The "appointed days" were fixed by the Minister of Labour

with the consent of the Treasury as 7th January, 1935 and 1st March, 1935. The latter was postponed indefinitely but has now been fixed as 1st April, 1937.

THE DRAFT UNEMPLOYMENT ASSISTANCE REGULATIONS were laid before both Houses of Parliament in December, 1934, in accordance with Sections 38 (3) and 52 (2) of the Unemployment Assistance Act, 1934, and were approved by both Houses. For the purpose of assessing needs applicants are divided broadly into two classes (*a*) those forming part of a household, and (*b*) those living alone. The question whether an individual applicant falls within one class or the other is a question of fact to be determined by the Board's officer or ultimately by the Appeal Tribunal.

The effect of these provisions is—

(1) Poor law authorities ceased to administer transitional payments on the first appointed day, viz.: 7th January, 1935; existing determinations will continue in force for the full period unless revoked by the Unemployment Assistance Board to whom applications for allowance must be made by persons who, but for the Act, would have been in receipt of transitional payments.

(2) Poor law authorities on the first appointed day, viz., 7th January, 1935, ceased to give outdoor relief to persons who can apply for an allowance—that is, persons who would have been entitled to transitional payments but for the Act.

(3) Poor law authorities will cease to give out-relief to the able-bodied, coming within Part II of the Act, and their dependants, on the second appointed day.

THE UNEMPLOYMENT ASSISTANCE (TEMPORARY PROVISIONS) ACT, 1935, was passed to meet the condition of emergency which followed the "standstill" arrangements due to the breakdown of the operation of the Regulations issued by the Board. The second appointed day was postponed indefinitely. Provision was made to ensure that during the standstill period no qualified person received less in unemployment assistance than he would have received under the Transitional Payments scheme.

THE UNEMPLOYMENT ASSISTANCE REGULATIONS, 1936, become operative as from 16th November, 1936.

UNEMPLOYMENT GRANTS COMMITTEE This Committee was responsible for the administration of the Grants provided by the Treasury for the relief of unemployment. The funds were provided principally for local authority schemes.

The Committee acted with powers approved by the Treasury until the 31st August, 1929, and thereafter with statutory powers under the Development (Loan Guarantees and Grants) Act, 1929, on re-appointment by the Minister of Labour, with the approval

of the Treasury, under Section 4 of Part II of that Act. The operation of the Act was limited to a period of three years from the 31st August, 1929, and accordingly, consequent on the decision of the Government not to renew the Act, the Committee's term of appointment ended on 31st August, 1932.

THE SPECIAL AREAS (DEVELOPMENT AND IMPROVEMENT) ACT, 1934. Introduced as the Depressed Areas Bill, this Act has for its object the co-ordination of efforts to deal with unemployment in depressed areas under two Government Commissioners one for England and Wales and another for Scotland. The sum of two million pounds is provided under the Act.

THE SPECIAL AREAS RECONSTRUCTION (AGREEMENT) ACT, 1936, authorises the Treasury to make an agreement with a company to be incorporated by the name of the Special Areas Reconstruction Association Limited, and to make payments in accordance with that agreement.

COTTON MANUFACTURING INDUSTRY (TEMPORARY PROVISIONS) ACT, 1934. This Act provides that, in the event of an agreement as to wages being reached between organizations of employers and workers representing the greater part of the industry, a joint application may be made to the Minister of Labour for the making of an Order under the Act. The next step is the appointment by the Minister of an *ad hoc* Board to consider the application. If the Board are unanimously in favour of such course, the Minister may make an Order making the observance of the agreement obligatory throughout the industry. Payment of a worker at less than the agreed rate will then involve liability to a fine not exceeding ten pounds.

The procedure for revoking an Order is similar to that for the making of an Order. The Act is to cease to operate on 31st December, 1937, without prejudice to any Order already made thereunder.

INSURANCE OF AGRICULTURAL WORKERS. A recommendation that unemployment insurance should be extended to agricultural workers throughout the country was included in a report sent in December, 1934, to the Government by the Statutory Committee on Unemployment Insurance. The Report was issued in January, 1935, and the recommendations were incorporated in the Unemployment Insurance (Agriculture) Act, 1936.

Non-manual Workers. The Report of the Unemployment Insurance Statutory Committee on the Renunciation Limit for Insurance of Non-manual Workers was issued in April, 1936. It recommends the raising of the limit from £250 to £400 a year.

CHAPTER XIX

THE MINISTRY OF PENSIONS

1. THE MINISTRY OF PENSIONS ACT, 1916. On the 14th November, 1916, a Board of Pensions Bill was introduced by Mr. Arthur Henderson, then Paymaster-General, with the general object of improving the administration of pensions and grants awarded for disablement sustained in war service. It was proposed by this Bill to constitute a Board of Pensions with the Paymaster-General as President and the Parliamentary Secretaries of the Admiralty and Local Government Board and the Financial Secretary of the War Office, as members. The Bill gave the proposed Board power to deal with military pensions only, and on this and other points met with considerable criticism in the House of Commons. As a result, substantial amendments were proposed by the Government while the Bill was in Committee and were embodied in a new Bill, which became law on the 22nd December, 1916.

2. CONSTITUTION OF THE MINISTRY OF PENSIONS. The Ministry of Pensions Act, 1916, constituted a Minister of Pensions responsible to Parliament, and provided that he shall be entitled to receive advice and assistance on any matter on which he may request it from the Parliamentary and Financial Secretary of the Admiralty, the Financial Secretary of the War Office, and the Parliamentary Secretary of the Ministry of Health. The Minister of Pensions is assisted by a Parliamentary Secretary and a Permanent Secretary, together with a Principal Assistant Secretary, Assistant Secretary, and Principals.

3. POWERS AND DUTIES OF MINISTER. The Act transferred to the Minister of Pensions, as from a date to be prescribed by Order in Council, the powers and duties of the Admiralty, the Chelsea Commissioners, and the War Office in respect of the administration of war pensions and grants to officers and men, and to their widows, children, and dependants. This also extended to persons in the nursing services of the naval and military forces, except " service " pensions, in-pensions, and pensions or grants payable out of funds provided exclusively for the purpose of Greenwich Hospital. The award of " service " pensions remains under the control of the Admiralty and War Office.

4. NAVAL AND MILITARY WAR PENSIONS, ETC. (ADMINISTRATIVE EXPENSES), ACT, 1917. This Act deals mainly with the

manner in which the administrative expenses of Local War Pensions Committees are to be met. Section 3 of the Act, however, gives the Minister power to approve the formation of Local Committees in areas with a population between 20,000 and 50,000, the decision on which had by the Naval and Military War Pensions Act, 1915, been left exclusively to the discretion of the Statutory Committee.

5. NAVAL AND MILITARY WAR PENSIONS, ETC. (TRANSFER OF POWERS), ACT, 1917. The arrangements contemplated by the Ministry of Pensions Act proved to be unworkable in practice. The Statutory Committee which had been established under the Act of 1915 was dissolved and its functions were transferred to the Minister by the Act of 1917. At the same time Section 2 of the Act required the Minister to appoint a committee (the Special Grants Committee) to which were transferred the functions of the Statutory Committee.

6. CENTRAL ADMINISTRATION. With the passing of the Transfer of Powers Act, 1917, the constitution of the Department was modified to provide for the direct administration by the Ministry of the powers of medical treatment and of training taken over from the Statutory Committee, and for the establishment of a further division to deal with the work of the Special Grants Committee set up under that Act, for which an additional Assistant Secretary was appointed The Ministry is now divided as follows—

(1) General Administration under a Principal Assistant Secretary.
(2) Awards Division under an Assistant Secretary.
(3) Accounts Division under the Accountant-General.
(4) Pension Issue Office under the Controller.
(5) Special Grants Committee under a Secretary.
(6) Executive and Clerical under the Senior Principal Clerk.
(7) Medical Services under a Director-General.
(8) Area Offices both London District and Provincial under Chief Area Officers.

7. CENTRAL ADVISORY COMMITTEE was constituted under the War Pensions Act, 1921, to assist the Central Administration. This Committee consists of officers of the Ministry (local and central), ex-service men, and representatives of any committees constituted under the War Pensions Acts. This Committee considers such matters as may be put before it by the Minister for its advice.

8. The LOCAL WAR PENSIONS COMMITTEES were formed under the Naval and Military War Pensions Act, 1915, and re-constituted

under the War Pensions Act, 1921. The Committees consist of not more than 25 members, appointed by the Minister, and the scheme provides for the inclusion of (*a*) disabled men who have been discharged during the war; (*b*) women in receipt of pensions arising out of service during the war; (*c*) representatives of such local authorities whose districts are situated in the area; (*d*) employers and workmen in industry in equal numbers; (*e*) voluntary associations engaged in the care of ex-service men and their families in the area.

The subject is dealt with in detail in *Social Administration, including the Poor Laws* (Pitman).

SECTION V

THE DEVELOPMENT OF NATIONAL RESOURCES

CHAPTER XX

THE BOARD OF TRADE

HISTORICAL. As a permanent Department, the Board of Trade dates back to the Commonwealth. The Council of Trade and Plantations was established in 1660 for the purpose of collecting statistics and information with reference to the nation's trade and its imports and exports. The Board was abolished in 1675 and re-established in 1695. In 1782 this Council was again abolished and the affairs of trade were managed by an informal Committee of the Privy Council. The present department owes its origin to an Order in Council of 1786, by which the Committee of Council for Trade was appointed and an establishment of clerks attached to it. In 1862 the popular title of the Board of Trade was first adopted by statute. The name under which this department carries out its work is a contraction, the full name being, "The Lords of the Committee of His Majesty's Privy Council appointed for the consideration of all matters relating to trade and foreign plantations." By the latter term is meant the Colonies, which were formerly under the jurisdiction of the Board of Trade.

CONSTITUTION. The Board of Trade is an executive Committee of the Privy Council, and consists of a President, who is a Member of Parliament, and the following *ex-officio* members: His Majesty's Principal Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, the Speaker of the House of Commons, and the Archbishop of Canterbury. The Board never meets, but periodical meetings take place between the President and the heads of the various departments.

ADMINISTRATION. The President is assisted politically by two Parliamentary Secretaries and Secretary for Mines Department The permanent staff includes the Chief Economic Adviser to H.M. Government; Chief Industrial Adviser to H.M. Government; Permanent Secretary; Second Secretary; Under Secretaries; Principals; Assistant Principals and the usual technical and clerical assistants. In September, 1919, the President established

an internal Administrative Council, which includes the Parliamentary and Permanent Secretaries, and the heads of the chief administrative departments

FUNCTIONS. In recent years the Board of Trade has fostered the work of Governmental control of certain functions until the department has become sufficiently important to become an independent entity. Thus, there has developed from it the Ministry of Agriculture and Fisheries, in 1917 the Ministry of Labour, in 1919 the Ministry of Transport, the Mines Department, and the Department of Overseas Trade.

The duties of the Board of Trade are to encourage and supervise the trade and industry of the country, and also to enforce certain statutes relating to trade.

Since January, 1918, the Board has been organized in two main divisions: (I) Department of Commerce and Industry, and (II) Department of Public Service Administration There are also three General Departments.

I. DEPARTMENT OF COMMERCE AND INDUSTRY is concerned mainly with the development of trade, with vigilance, with suggestions, with information, and with the duty of assisting national commerce and devising and assisting the policy of national industry. The Department is divided into the following divisions—

Commercial Relations and Treaties Department looks after the commercial interests of this country in regard to conventions and treaties with other countries. It possesses an Imports and Exports Licensing Section.

Mines Department, see page 120.

Department of Overseas Trade (*Development and Intelligence*) is a joint department of the Board of Trade and the Foreign Office. The department was set up in response to continual pressure from the industrial and commercial community. It deals chiefly with existing and possible trade with other countries. It now has control of the Consular and Attaché Services, and pays special attention to the commercial possibilities of foreign countries, receiving regular reports from its foreign representatives. It is responsible for the management of the British Industries Fair and the Export Credits Guarantee scheme. The department is assisted by an Advisory Committee of business men. It is represented in Parliament by its own Parliamentary Secretary, who occupies the position of additional Under-Secretary of State for Foreign Affairs, and also of additional Parliamentary Secretary to the Board of Trade.

Industries and Manufactures Department (*including Gas Administration and Standards Division*) deals with the development

of industries, paying special attention to the influence which foreign manufacturers abroad, and alien manufacturers in this country, have upon British production, with special reference to the Safeguarding of Industries Act, 1921. It possesses five subdivisions, viz · Scientific Instruments, Glass, and Potash Production Branch, Flax Control Board, Mineral Resources Development Department, Empire Cotton Growing Committee, and Licensing Section. The Director of Gas Administration is under this department. The Gas Legislation Committee issued its Final Report in April, 1933.

The Gas Undertakings Act, 1934, provides *inter alia* for the abolition of the office of Chief Gas Examiner as from 1st January, 1935, and that thereafter any appeal under the Gas Undertakings Act, 1920, shall be made to the Board of Trade who shall appoint a competent and impartial person to determine the appeal. The office of Gas Referees shall be abolished on the 1st January, 1939, and thereafter the functions of the gas referees shall be discharged by the Board of Trade who may appoint not more than three competent persons to advise the Board as to the improvement of the methods and apparatus for testing gas.

The Standards Division has the custody of Imperial and Secondary weights and measures, and controls the administration of the Weights and Measures Acts. The Department also deals with Merchandise Marks and Food. The Sale of Food (Weights and Measures) Act, 1926, confers power upon the Board of Trade to make Regulations upon the subject generally, and Inspectors of Weights and Measures are given the right of entry upon, and inspection of, premises whilst penalties varying from £5 to £50 may be imposed by Courts of Summary Jurisdiction in respect of contraventions of the provisions of the Act.

The Weights and Measures (Amendment) Act, 1926, extends the power of the Board of Trade under the Weights and Measures Acts (to make regulations for the control of weights and measures and weighing instruments used for trade) to the making of regulations for the control of measuring instruments.

Patent Office and Industrial Property Department was constituted out of the old Patent Office, which administered the Patents, Designs, and Trade Marks Acts, including the Registration of Trade Names The Patent and Designs Act, 1932, amended the laws relative to this subject.

Trade Marks. The Departmental Committee on the Law and Practice relating to Trade Marks was appointed in January, 1933, under the Chairmanship of Viscount Goschen, to report as to what changes it considered desirable in the existing law and practice relating to Trade Marks. The Report (Cmd. 4568; 1933)

deals with numerous matters which are reported on under a number of separate heads broadly indicating the nature of the subject-matter concerned, and set out as far as practicable in the order of arrangement of the sections of the Trade Marks Act, 1905. The Committee's conclusions and recommendations include several matters which were represented to it by witnesses as of considerable importance and urgency to the commercial and industrial interests concerned, and which, if adopted, will involve fundamental changes in the existing trade mark law.

Statistics Department (including Census of Production Office) centralizes and consolidates the work of the Board of Trade in collecting and classifying the statistical returns which are issued periodically. This important function of the Board of Trade enables the outside public to learn something of the present commercial and industrial state of the country, and of possible outlets for trade in other countries. It includes two important branches, viz., (*a*) the Census of Production Office, and (*b*) the Industrial Inquiries Office.

Intelligence and Parliamentary Branch (including Library) is the result of the recommendations of the Report of the Machinery of Government Sub-Committee of the Ministry of Reconstruction. It includes the temporary Industrial (War Inquiries) Branch. This department keeps in touch with the Committee of the Privy Council on Scientific and Industrial Research, with the Imperial Institute, now under the control of the Dominions Office, and the National Physical Laboratory; thus affording a sort of laboratory where the economic effect on Great Britain and the Empire of all the latest discoveries and experiments can be ascertained.

II. DEPARTMENT OF PUBLIC SERVICE ADMINISTRATION is primarily engaged in statutory and other administrative functions of a permanent nature with regard to trade and transport now or in future entrusted to the Board of Trade. The divisions of this department are as detailed below—

(1) *Mercantile Marine Department (including Consultative Branch and Sea Transport Department)* was created a separate branch of the Board of Trade in 1850, about which time many new and important marine questions came under the department, such, for example, as the survey of passenger steamers, the compulsory examination of masters and mates, the establishment of shipping offices for the engagement and discharge of seamen. Subsequent legislation so increased the work of the department that, in 1866, it was divided into three, viz., the present Mercantile Marine Department, the Harbour Department, and the Financial Department. The present department supervises the

mercantile marine, and conducts examinations for the qualifications of masters, mates, engineers, and fishermen, thus safeguarding the interests of the public at sea. The duties hitherto undertaken by the Public Utilities and Harbour Department in connection with lighthouses, foreshores, tidal waters, and navigation, wreck and salvage, and pilotage, are now assumed by this department.

General Register and Record Office of Shipping and Seamen. There is also the Marine Survey Staff, who supervise ships and appliances. An advisory body of experts, known as the Marine Consultative Branch, advises the Marine Survey Staff on technical matters. The Sea Transport Branch arranges the provision of all sea transport required for the conveyance of personnel and stores by the fighting forces and other Government Departments. The Department administers H.M. Coastguard and also exercises control over the principal lighthouse authorities. In connection with this Department is the office of the Registrar-General of Shipping and Seamen, who keeps the General Register and Record Office of Shipping and Seamen, and the logs of ships and official shipping records.

The Shipping Assistance Act, 1934, follows the lines laid down in the White Paper, and the provisions of the money resolution passed by the House of Commons. Under the Act—

A Tramp Shipping Subsidy Advisory Committee is to be appointed by the Board of Trade, which will make recommendations regarding the payment of the tramp subsidy.

A committee is also to be appointed by the Board of Trade with reference to the advances for demolition and building or modernization of cargo vessels. This is called the *Ships Replacement Committee.* If the Board, after consultation with it, are satisfied that the proposals will promote the general interests of British shipping and otherwise comply with the requirements of the Act they may, upon the recommendation of the committee, make the desired advances.

The requirements apply to vessels (not carrying more than twelve passengers) employed in the carriage of commercial cargoes and not employed mainly in voyages between ports within the United Kingdom, Irish Free State, Isle of Man and Channel Islands, or in maintaining regular services with ports in the Continent between the River Elbe and Brest. This is a wider restriction than in the case of the tramp subsidy. The only restriction of the tramp subsidy is in respect of voyages wholly between ports within the United Kingdom, Irish Free State, Isle of Man, and Channel Islands. It does not exclude services to the near Continent.

The terms of the scrap and rebuild or modernize advances are

set out in the Act. They will be secured by a first mortgage on the vessels: the rate of interest will not exceed 3 per cent, and the advance will be repayable within twelve years.

There will be, besides the two committees appointed by the Board of Trade, the *Tramp Shipping Administrative Committee*. This is to be established by the industry itself, with the object of promoting co-operation among shipowners. As it is an unofficial committee it is not provided for in the Act

(2) *Companies Department* deals with legislation in regard to the Government control of Joint-Stock Companies under the Companies Act, 1929, the Registration of Business Names Act, 1916, the Assurance Companies Act, 1909, and the Arts Unions Act, 1846.

(3) *Companies (Winding-up) Department* supervises and controls Official Receivers in connection with the winding-up of Joint-Stock Companies in the High Court and in the County Courts. For this purpose it includes the Joint-Stock Companies' Registry Office, and the Companies' Winding-up Office under the Companies Acts. To a certain degree this department protects the public from fraud in regard to company flotation.

(4) *Bankruptcy Department* was established by the Bankruptcy Act, 1883. It is responsible for administration of the law relating to Bankruptcy and Deeds of Arrangement.

(5) *Bankruptcy (High Court) Department* controls the Official Receivers in Bankruptcy attached to the High Court and the County Courts Its main duty is to audit the accounts of trustees in bankruptcy, and to supervise their conduct and dealings.

III. THREE GENERAL DEPARTMENTS, viz, Finance Department, Establishment Department, and Solicitor's Department are really internal departments and have little to do with the functions of the Board.

Besides these Departments, there are certain temporary Departments, including the Controller of Trading Accounts, Clearing Office (Enemy Debts), including Russian Claims Department and Reparations Claims Department, most of which are the outcome of the Great War. The Food Council is attached to this Department.

The *Board of Trade Journal* is the official publication of the Board It was first published in July, 1886, and is now the medium of announcement for the Board of Trade in general and the joint Department of Overseas Trade.

Board of Trade Advisory Committees have been established to deal with various matters, including British Industries Fairs, the Coal Industry, Miners' Welfare Fund, Sugar Beet Industry, Films Advisory Committee, and many others.

Recent Developments

GIFT COUPON TRADING. In April, 1933, a Committee was appointed under the chairmanship of Mr. Geoffrey W. Peto, M.P., to "consider the trading practices which the Gift Coupon Bill, introduced into the House of Commons on 28th November, 1932, sought to make illegal, and to report whether, in their opinion, any of these practices are detrimental to the public interest." The Committee reported in August, 1933, and recommended no change in the present law on the subject.

The Cotton Spinning Industry Act, 1936, created a Spindles Board whose duty it will be to eliminate redundant spinning machinery in cotton mills, and to regulate the use of cotton spinning machinery. The cost will be raised by a levy on mills that continue working.

Mines Department

The MINES DEPARTMENT (including the Petroleum Section) was established by the Mining Industry Act, 1920, for the purpose of securing the most effective development and utilization of the mineral resources of the United Kingdom and the safety and welfare of those engaged in the mining industry.

Administration. The Department is under the Secretary for Mines with a Parliamentary Private Secretary. There is a Permanent Under Secretary for Mines; Principal Assistant; Secretaries and Assistant Under Secretaries for Mines together with Principals and Assistant Principals. The Mines Inspectorate is under the Chief Inspector.

The Mining Industry Act, 1926, facilitated the reorganization of the industry through methods of amalgamation or absorption schemes, total or partial. The Board of Trade must be satisfied that the aim is "the more economical and efficient working, treating, or disposing of coal" It also makes a levy of royalties for the Welfare Fund, securing facilities to the workers for baths and drying clothes.

The Coal Mines Act, 1930, is divided into Parts as follows: Part I—Production, Supply, and Sale of Coal; Part II—Reorganization of Coal Mining Industry; Part III—Hours of Work, providing for the reduction to 7½ hours as the maximum daily hours of work underground as from 1st December, 1931; Part IV—Coal Mines National Industrial Board. The Coal Mines Act, 1932, continues the 7½ hours' day until the international convention on hours of labour is ratified.

THE COAL MINES ACT, 1934, had for its purpose to amend the Coal Mines Act, 1930, in two respects—with regard to export coal and minimum prices.

The experience of the last three years under the 1930 Act had brought to light a number of difficulties and flaws in the measure, two outstanding problems to be faced being that of prices as between one district and another, and even between pits in one district, and the problem of the export trade. There was the need of securing full provision for increasing the export trade without injuring the inland market. There was also the need of a firmer control of the inland tonnage system. They had to see that on the one hand there was freedom for export, and on the other hand they had to separate the export and inland allocations and see that the inland tonnage was used in the inland market and the incentive now existing to vary inland prices was reduced.

The rise in prices which had been prophesied had not come about, but it was no mean advantage to the industry able to bring forward a scheme, for the Central Council had agreed on one which was under discussion in the districts

THE PETROLEUM (PRODUCTION) ACT, 1934, vests in the Crown the property in petroleum and natural gas within Great Britain, and makes provision with respect to the searching and boring for and getting of petroleum and natural gas, and for such purposes

Section 1, which gives this power to the Crown, specifically excepts licences already in force under the Petroleum (Production) Act of 1918, which, however, the Act repeals.

CHAPTER XXI

THE MINISTRY OF AGRICULTURE AND FISHERIES

HISTORICAL. The first Board of Agriculture was created by Royal Charter in 1793, but, though supported by Parliamentary funds, it was not so much a Government department as a society for the improvement of agriculture. When the grant was withdrawn the Board ceased to exist.

In 1836 a body of Commissioners was appointed to carry out the provisions of the Tithe Act, 1836. By this law tithes were converted into a charge payable in money calculated on the average tithe paid in each parish during the seven years previous to 1836, and fluctuating yearly in value according to the septennial average of the prices of wheat, barley, and oats.

The Enclosure Act, 1845, provided for the appointment of a separate body of Commissioners to carry out the provisions of the Act. The policy was not merely to bring fresh land into cultivation, but principally to get rid of the old customs of cultivation by scattered parcels or shifting allotments in common fields.

In 1851 the two foregoing departments were merged into one.

The Cattle Plague Department was established in 1865 as a branch of the Home Office to deal with a serious epidemic of cattle plague, or rinderpest. It was transferred to the Privy Council in 1865.

In 1882 the department was reorganized under the name of Land Commissioners, when duties were imposed upon it in connection with the Settled Land Act, 1882. The object of this Act is to confer on "limited owners" as large and effectual powers of using the land to the best advantage as is compatible with settlements. By this Act the tenant for life has powers of selling and leasing and other powers of administration. Expenditure on improvements is subject to the control of the Minister or of the High Court.

The Board of Agriculture was established in 1889, by consolidating a number of administrative functions hitherto performed by the Privy Council and the Commissioners of Works. It was modelled after the example of the Board of Trade. The expression " agriculture " as defined in The Board of Agriculture Act, 1889, includes " horticulture."

The Act of 1889 provided for the transfer to the Board of—

(*a*) The powers and duties of the Privy Council under the Contagious Diseases (Animals) Acts and the Destructive Insects Act, 1877.

(*b*) The powers and duties of the Land Commission under certain Acts.

(*c*) The powers and duties of the Commissioners of Works and Buildings in connection with the Ordnance Survey.

The powers were extended in 1903, and the Board became known as the Board of Agriculture and Fisheries.

THE MINISTRY OF AGRICULTURE AND FISHERIES ACT, 1919, Part I, established the office of Minister of Agriculture and Fisheries, together with a Ministry of that name, in substitution for the Board of Agriculture and Fisheries.

ADMINISTRATION. The Minister is assisted by a Parliamentary Secretary. The Department is under the control of a Permanent Secretary, with a Chief Scientific Adviser, assisted by a staff of administrative and technical officers and Commissioners.

The agricultural work of the Ministry is divided among seven divisions, six under assistant secretaries and one—the Diseases of Animals Division—under the Chief Veterinary Officer. The divisions are (1) Education and Research (Agriculture and Horticulture), (2) Commercial, Land Drainage and Rural Life, (3) Markets, (4) Economics, (5) Livestock and Labour, (6) Land, (7) Diseases of Animals.

The Fisheries Department and the Welsh Department are each under the charge of a Principal Assistant Secretary. There are also the Legal Branch, Establishment Division, and Finance Division, which carry out services for the Ministry as a whole.

FUNCTIONS. The Ministry is generally responsible for the control and eradication of Animal and Plant Diseases in this country; for the encouragement and development of Agricultural Education and Research; for central administrative work in connection with the Improvement of Livestock, Small Holdings and Allotments, Land Drainage and Improvement. It has powers and duties under the Tithe, Copyhold, Inclosure and Commons Acts, the University and College Estates Acts, the Glebe Lands Acts, and various other enactments such as the Seeds Act, the Fertilizers and Feeding Stuffs Acts, the Merchandise Marks Acts, and the Food and Drugs Acts. It is responsible for the collection and tabulation of agricultural statistics, for the investigation of marketing methods, and for the issue of leaflets and other publications on agricultural subjects.

SCOTLAND. There is a separate Fisheries Board and a separate Department of Agriculture for Scotland, but the Ministry exercises in that country the powers and duties under the Diseases of Animals Acts and the Ordnance Survey Acts.

The Agricultural Wages Board, the Royal Botanical Gardens

at Kew, and Ordnance Survey Department at Southampton are also included in the Ministry's responsibilities.

THE FISHERIES DEPARTMENT is responsible for a number of Acts relating to the fishing industry, and assists the work of research undertaken at the Marine Biological Laboratories at Plymouth and Port Erin

Parts II and III of the Ministry of Agriculture and Fisheries Act, 1919, set up new central and county agricultural administration, but the central bodies have no executive powers

AGRICULTURAL COMMITTEES. The appointment of such Committees is compulsory on every county council, but is optional in the case of county boroughs and the County of London. Considerable powers are delegated to these Committees with respect to agriculture, and it is also provided that agricultural education may be referred to them

Recent Developments

THE AGRICULTURAL WAGES (REGULATION) ACT, 1924, which provides for the establishment of Agricultural Wages Committees for each county, and for an Agricultural Wages Board for England and Wales on the lines of the Trade Boards described in Chapter XVIII, is also administered by this Department.

AGRICULTURAL CREDITS. The Agricultural Credits Act, 1928, provides for long-term credits The Act sets up the Agricultural Mortgage Corporation, Limited, to lend on mortgage secured on land or improvements The State has provided free of interest for 60 years a guarantee fund of £750,000. The corporation is empowered to grant advances to farmers on the valuation of their land up to two-thirds of the value, to be repaid by equal yearly or half-yearly instalments, principal and interest, spread over a long period. In the case of short-term credits there is no need for any new organization to lend the necessary capital Farmers and agricultural co-operative societies are enabled to secure advances by creating an agricultural charge on their stocks, crops, and other agricultural assets

THE AGRICULTURAL LAND (UTILIZATION) ACT, 1931. Part I establishes large-scale farms; demonstration farms for special purposes; and permits land which needs reconditioning to be taken and reconditioned. Part II enables the Minister to provide small-holdings for applicants of an approved kind and provides machinery for the compulsory acquisition of land.

THE SUGAR INDUSTRY (RE-ORGANIZATION) ACT, 1936, provides for the appointment of a Sugar Commission charged with the duty of keeping under review the growing of sugar beet and the

manufacture, refining, marketing and consumption of sugar in the United Kingdom. They also have important advisory and constructive functions.

Agricultural Marketing Schemes

THE AGRICULTURAL MARKETING ACT, 1931, was the prelude to a wide development in controlled marketing of farm produce. It enables schemes to be made for regulating the marketing of agricultural products; confers powers upon boards and other bodies to be constituted in connection with or acting for purposes connected with such schemes; establishes agricultural marketing funds for the purpose of making loans thereout to the boards aforesaid; and encourages agricultural co-operation, research, and education.

THE AGRICULTURAL MARKETING ACT, No 1, 1933, was the result of the experience gained by the preparation of Marketing Schemes under the 1931 Act. It provides for the regulation of the imports of agricultural produce if a marketing scheme dealing with that branch of the industry in the United Kingdom is in force or in course of preparation. It also provides for the regulation and development of home supplies.

THE AGRICULTURAL MARKETING ACT, No. 2, 1933, was the result of the monetary loss of the Pigs Marketing Board in 1933. The Act provides for the payment of compensation to producers who may have been adversely affected by the working of a marketing scheme. It also lays down provisions whereby Marketing Boards can assist one another in the marketing of grants and loans.

The Existing Schemes include—

Raspberries Marketing Scheme (Scotland).
Hops Marketing Board.
Scottish Milk Marketing Scheme
Pig and Bacon Marketing Schemes.
The Bacon Development Board.
The Bacon Quota Scheme.
The Milk Marketing Board (England and Wales)
The Potato Marketing Scheme.
Potato Import Duties were imposed in 1932 by the Import Duties Advisory Committee.
Live Stock Marketing Board.
Poultry and Eggs Marketing Board
Sugar.

THE HORTICULTURAL PRODUCTS (EMERGENCY CUSTOMS DUTIES) ACT, 1931, is on similar lines to the Abnormal Importations Act,

1931, and enables the Minister of Agriculture and Fisheries, with the concurrence of the Treasury, to impose customs duties on any of the articles named in the Schedule to the Act which include fresh fruits, fresh vegetables, flowers, etc.

THE MILK MARKETING BOARD, constituted in September, 1933, by an overwhelming majority of the English and Welsh farmers, is responsible for the sale and collection of milk under contracts with farmers and for the utilization of surplus milk for cheese-making and the manufacture of dried milk on a large scale. Operations began on 1st October, 1933, but the pooling system operated from 1st January, 1934

The Milk Marketing Act, 1936, extends the period of certain provisions of the Act of 1934 until September, 1937, including expenditure on the underpinning of the industry at a cost of £2,000,000.

AGRICULTURAL MARKETING REORGANIZATION COMMISSION was constituted in December, 1932, under the chairmanship of Colonel G. R. Lane-Fox, to prepare, in accordance with the provisions of the Agricultural Marketing Act, 1931, a scheme, or schemes, applicable in England and Wales for regulating the marketing of fat stock

EMPIRE MEAT COUNCIL and an International Meat Conference representative not only of Great Britain and the Empire countries but also foreign countries supplying substantial quantities was outlined by the Minister in July, 1936.

THE WHEAT ACT, 1933, provides for the appointment of a Wheat Commission which will be responsible for the working of the scheme which was evolved out of the proposals of 1932. The scheme aims at providing British wheat growers with a reasonably profitable price for their supplies by paying to authorized growers a subsidy representing the difference between the market price of their grain, and a "fixed price" of 45s. per quarter. The money is to come out of a Wheat Fund raised by means of a levy.

SLAUGHTER-HOUSE REFORM. The Committee, under the chairmanship of Earl de la Warr, which was appointed in January, 1931, "To consider and report on the question whether the present arrangements for the slaughtering of livestock for food are satisfactory from the economic standpoint," recommended in their Report of March, 1933, that there should be set up a statutory non-profit-making National Slaughter-houses Board which would have power to prohibit the erection of new, or alterations of existing slaughter-houses by public authorities.

THE SEA FISHING INDUSTRY ACT, 1933, enables the Board of Trade by order to regulate and restrict the landing in the United

Kingdom of foreign-caught sea-fish, and provides for a Commission to be appointed to investigate and report on matters relating to the landing, storage, treatment, and sale of sea-fish, and to make recommendations for the reorganization of the industry which were thought necessary. The first report of the Commission has now been published, and deals with the herring industry. The report is amplified by a special investigation covering the same field which has been made by the Economic Advisory Committee.

THE MILK ACT, 1934, has for its objects to increase the consumption of milk and to clean up the herds

TITHES ACT, 1936. A Royal Commission under the Chairmanship of Sir John Fisher Williams, K.C., was appointed in August, 1934, with the following terms of reference: "To inquire into and report upon the whole question of tithe rent charge in England and Wales and its incidence, with special reference to stabilized value statutory remission, powers of recovery, and methods of terms of redemption."

The Report was issued in 1936. The main conclusions are that the existing system is unsatisfactory and should be extinguished on terms involving the creation of stock guaranteed by the State, the interest and sinking fund on which are to be provided by landowners liable to Tithe Rentcharge This stock is to be issued to Tithe owners in compensation for the surrender of their existing rights to Tithe Rentcharge.

Effect was given to these recommendations in the Tithe Act, 1936.

DEPARTMENTAL COMMITTEE ON THE ORDNANCE SURVEY issued its Report in 1936 and recommended the complete revision of the ordnance survey maps.

CHAPTER XXII

THE MINISTRY OF TRANSPORT

THE MINISTRY OF WAYS AND COMMUNICATIONS BILL received its Second Reading in March, 1919. Under the terms of the Bill it was proposed that a Ministry should be set up to co-ordinate all means of transport; to take over the control of electricity; and roads and bridges and vehicular traffic. The Bill met with a hostile reception, and certain of the proposed powers of the Ministry were considerably modified during the Committee stage.

The Ministry of Transport Act, 1919, established a Ministry of Transport for the purpose of improving the means of, and the facilities for, locomotion and transport. The Act provided for the transfer to the Minister, as from such date or dates as His Majesty in Council might by Order determine, all powers and duties of any Government department in relation to (*a*) railways; (*b*) light railways; (*c*) tramways; (*d*) canals, waterways, and inland navigations; (*e*) roads, bridges, and ferries, and vehicles and traffic thereon; (*f*) harbours, docks, and piers. Such transfer includes the powers and duties of any Government department in relation to any of the above, or other undertaking concerned with any of the above matters, and with respect to the appointment of members or the procedure of any commissioners, conservancy board, or other body having jurisdiction with respect to any matter as aforesaid.

It is lawful for the Minister to establish, and either by himself or through any other persons to work, transport services by land or water. For giving advice and assistance to the Minister, Advisory Panels, including representatives of local authorities, have been set up, together with a Rates Advisory Committee.

The Ministry has been organized upon broad lines. The Railway Executive, composed of the general managers of the principal lines, created as the result of the war, has been retained, but with modifications. The Roads Department is separate under the control of a Chief Engineer. The departments of the rest of the Ministry are: Secretarial, Engineering, Finance and Statistics, together with an Establishment and a Registry.

ADMINISTRATION The Minister is assisted by a Parliamentary Secretary, together with a Permanent Secretary and Deputy Secretary. Each department is under the control of a Director-General, or a Chief Engineer, or an Assistant Secretary.

Railways

The Government, as from the 4th August, 1914, assumed the control of most of the railways of the United Kingdom, under the Regulation of the Forces Act, 1871, which provides that when it is declared by Order in Council that an emergency has arisen in which it is expedient that the Government should have control over the railways, one of the Principal Secretaries of State may, by Warrant, empower any person named in such Warrant to take possession of any of the railways in the United Kingdom and to use them for His Majesty's service. The Act also provides for the payment of compensation to the Railway Companies by the Government.

It had been generally recognized that the entire subversion of commercial operations, which had taken place under the military *régime*, had been so widespread that an immediate return to pre-war conditions was impossible, and that there must be an interval of transition antecedent to the resumption of the normal conduct of the undertakings. It had therefore been agreed at an early stage that the control should continue on the same terms for a further period of two years after the end of the war, and, inasmuch as the working expenses had greatly increased under the Government management, it was recognized that there must be corresponding increases in the railway rates and charges. The net receipts of the railways had fallen from forty-five million pounds in 1913 (which enabled them to pay a dividend of about 4 per cent) to six millions in 1920 (which was insufficient to meet Debenture and Rent Charges). The problem was to recover financial stability and make railways self-supporting; and at the same time destroy wasteful competition between the systems by economies and co-operation.

Such was the situation when the Government, in the autumn of 1918, announced their determination to make transport a leading part of their reconstruction policy. This was followed by the introduction into Parliament of "The Ways and Communications Bill," which provided for the grouping of the railways. The Board of Management of each group was required to contain representatives of employees as well as shareholders, viz., officials one-third and workmen two-thirds. The principal railway companies opposed the clauses relating to them, and this part of the Bill was accordingly withdrawn.

The Railways Act, 1921

The whole of the powers of the Government respecting the control of railways, which were formerly exercised by various departments, have now been concentrated in the Ministry of

Transport under the Railways Act, 1921, which " provides for the reorganization and further regulation of railways and the discharge of liabilities arising in connection with the possession of railways, and otherwise to amend the law relating to railways and to extend the duration of the Rates Advisory Committee."

The Act has three objects—

(1) The reorganization of the railways ;

(2) The discharge of the Government liability arising from their possession of the railways ; and

(3) The amendment of the law relating to railway companies.

Under the Railways Act, 1921, the railway systems of the country (except certain joint lines which are not dealt with in the Act) are divided into four large groups—

(1) The Southern Group, embracing the London and South Western Railway, and Companies south of London ; known as the Southern Railway.

(2) The Western Group, embracing the Great Western Railway and certain smaller Companies mostly in Wales ; known as the Great Western Railway.

(3) The North Western, Midland, and West Scottish Group, embracing all the lines West from London to the North of Scotland ; known as the London Midland and Scottish Railway.

(4) The North Eastern and East Scottish Group, embracing the lines running from London towards the North of Scotland on the East side ; known as the London and North Eastern Railway.

The formation of about 120 railway companies in the United Kingdom into four groups was expected to lead to substantial economy in working expenses, and it was, therefore, reasonable to look for considerable benefit, both to traders and the general community, from the measures of centralization that had come into operation.

The two chief problems which had to be faced were wages, and rates and fares.

Part IV of the Act deals with wages and conditions of service. All questions relating to rates of pay, hours of duty, or other conditions of service of employees in the manipulation of traffic, stationmasters, and the clerical staff (except those in the Special Class) are, in default of agreement between the railway companies and the trade unions, to be settled by the Central Wages Board, or, on appeal, by the National Wages Board as reconstituted under the Act. The Central Wages Board was reconstituted so as to include eight representatives of the railway companies. The employees' representatives include four representatives of the National Union of Railwaymen, two of the Associated Society of Locomotive Engineers and Firemen, and two of the Railway

Clerks' Association. The National Wages Board is composed of six representatives of the railway companies, six representatives of the railway employees, and four representatives of the users of railways, with an independent chairman nominated by the Minister of Labour. The Board is a national one, and wages and conditions of service are settled upon a national basis.

The Railway Rates Tribunal was constituted under Part III of the Act The Tribunal consists of three permanent members, with power to add to their number. Two Additional Members are appointed to deal with additional duties imposed upon the Tribunal under the London Passenger Transport Act, 1933. It is a Court of Record with an official seal which shall be judicially noticed. The permanent members are whole-time officers and hold office for such term not exceeding seven years, as may be determined, but are eligible for re-appointment

There are also two Panels, one known as the General Panel, and the other known as the Railway Panel, the members of which are nominated by various interests.

Whenever, for the purposes of any particular case or proceedings, the Rates Tribunal, either upon application by any of the parties or otherwise, so request, or the Minister thinks it expedient, there shall be added to the Rates Tribunal two additional members nominated by the Minister from the panels, one from the general panel, and one from the railway panel.

The functions of the Tribunal are to fix rates, conditions of carriage, classification of merchandise, and the granting of exceptional rates, etc.

The Railway (Road Transport) Acts, 1928, authorize the four Company Groups before mentioned to run vehicles in districts to which they have access by railway. The Acts authorize the Railway Companies to enter into agreements with existing road transport companies, and, if necessary, to subscribe to their capital and to convert them into feeders to the lines wherever possible.

The Railway and Canal Commissioners were created in 1873. In 1888 a new Railway and Canal Commission was appointed with extended and closely defined powers, including the provision as to maximum charges and rates, and " unreasonable facilities," " undue preference," and canals.

With a view to securing and promoting the public safety, or the interests of the public, or of trade, or of any particular locality, the Railway and Canal Commission may, on the application of any body of persons representing any such interests, require any railway company or companies to afford services, facilities, and conveniences upon and in connection with its undertaking (including the provision of such minor alterations, extensions, and improvements of existing works as will not

involve an expenditure exceeding £100,000) as may be specified in the Order.

The Minister of Transport may further require or authorize any railway company to conform gradually to measures of general standardization of ways, plant, and equipment, and to adopt schemes for co-operative working or common use of rolling stock, workshops, manufactories, plant, and other facilities.

The Commissioners hear appeals on Railway Rating Assessments

Railway Accidents. An Act was passed in 1840 requiring notice of the opening of all new lines to be given to the Board of Trade, the object being to give the officials of that department an opportunity to inspect the permanent way and its equipment. Two years later powers were given to the Board to delay the opening of any new railway until the Inspectors were satisfied as to the character of the work. This power of inspection and delay is now vested in the Ministry of Transport and it has developed in various directions, *e.g.*, to the rolling stock. Also in case of accident the Minister sends an Inspector to hold an inquiry and to report as to the cause of the accident.

Accounts. In 1911 the Railway Companies (Accounts and Returns) Act was passed, which provided for a standard form of accounts for all Railway and Canal Companies.

COMMITTEES OF INQUIRY. The Minister of Transport in January, 1928, appointed two new committees to inquire into railway matters, viz.—

(1) To review the recommendations made by the Automatic Train Control Committee of 1922 and to report what alterations, if any, should be made in the committee's conclusions having regard to the developments that have since taken place

(2) To review the recommendations made with respect to the standardization of the electrical equipment of railways and other matters by the Electrification of Railways Advisory Committee of 1921, and to report what modifications, if any, should be made in view of later developments.

The report of the latter Committee, which was under the Chairmanship of Lord Weir, recommended a plan for the electrification of all the railways during the next fifteen to twenty years. This would involve capital expenditure of £260,000,000 by the railways themselves and a further £80,000,000 by the Central Electricity Board and other undertakings.

Railway Passenger Duty. The Finance Act, 1929, provided for the remission of the duty subject to the expenditure by the railway companies of a sum equivalent to the capitalized value of the duty in 1928 upon schemes of development and improvement—preferably such as would benefit the heavy industries—

which would not, in the ordinary course, be embarked upon at the present time.

Tramways

The powers of the Board of Trade under the Tramways Act, 1870, to make a Provisional Order authorizing the construction of a tramway, and the powers of inspection, which are very similar to those exercised over railways, are now transferred to the Ministry. This applies also to Light Railways.

The Final Report of the Royal Commission on Transport, published in January, 1931, recommended the gradual abolition of tramways in favour of other systems of motor transport.

Harbours

The control of certain of the more important harbours, *e.g.*, Holyhead, which was formerly under the Board of Trade, is now exercised by the Ministry.

Canals

The control of canals was transferred from the Board of Trade to the Ministry of Transport under Order in Council as from 23rd September, 1919.

In June, 1920, the Minister of Transport announced that he had appointed a Committee on Inland Waterways. The terms of reference were—

(1) What portions (if any) of the inland waterway systems of the country should be acquired by the Minister of Transport with a view to improvement, and upon what terms ?

(2) What should be the form of ownership of such acquired portions, whether under the State through a Department of the Minister of Transport, or through a regional trust, or by any other method. If a trust be recommended, what should be its constitution and the nature of its governing body ?

(3) What improvement should be carried out in such acquired portions ; what would be the cost of the improvement, and how should the necessary funds be raised ; whether such acquired or improved portions would become self-supporting, and, if not, what benefit would be obtained to compensate therefor ?

(4) What method should be adopted to ensure that any improvement in the value of the frontages should be secured in part at least to the body carrying out the improvement to the waterway ?

(5) In what manner could co-operation best be developed between transport by water and transport by rail or road ?

At present there are about 4,600 miles of canals in the United Kingdom, of which about 1,350 miles are owned or controlled by railway companies. Dating mainly from the eighteenth century,

these canals are merely narrow cuts, fitted only for barge traffic conducted at a slow rate. It remains to be seen whether these canals can become the real rival or adjunct of the railways, or whether the improvement of means of communication lies in the improvement and reconstruction of the roads.

The Departmental Committee issued two Interim Reports. On consideration of the future of the canals, the Committee reported that the principal waterways seem naturally to arrange themselves into seven groups or systems, roughly described as—

1. The River Trent and its connections.
2. The Yorkshire canals.
3. The Lancashire canals.
4. The canals joining Liverpool with the Midlands.
5. The River Severn, with its connections.
6. The River Thames and its connections with the Midlands and Bristol.
7. The Birmingham Canal and its connections in the Midlands.

The Committee proposed that a beginning in grouping should be made with one or two of the groups, selecting those which present the best prospect of success with the least amount of capital expenditure, and that the River Trent and its connections stand out as pre-eminently suitable for the first experiment.

The Final Report of the Royal Commission on Transport, published in January, 1931, made recommendations relative to grouping of canals, either voluntarily or compulsorily, by the Minister of Transport

The Roads Department

The work formerly performed by the Joint Roads Committee relating to public highways was transferred, as from 31st March, 1920, to the Roads Department of the Ministry of Transport.

The Road Board established by the Development and Road Improvement Act, 1909, has now ceased to exist, and its powers, together with certain powers of the Development Commissioners, have been transferred to the Minister of Transport. The Ministry of Transport Act, 1919, provides for the appointment of a Roads Committee consisting of not less than eleven members—five representatives of highway authorities, five of the users of horse and mechanical road transport, and one of labour—to be appointed by the Minister after consultation with the interests concerned. The Committee appoints its own Chairman and the Secretary is appointed by the Minister.

The Minister of Transport possesses the former powers of the Road Board, which, with the consent of the Treasury, could construct and maintain new roads in any part of the United Kingdom. For this purpose, they might acquire land not only

for the road itself, but also up to 220 yards on each side from the middle of the road, and sell, lease, or manage this land, which is, of course, improved in value owing to the road. If they could not acquire the land on reasonable terms they might apply to the Development Commissioners, who might (without Provisional Order Confirmation Act) make an Order authorizing compulsory purchase. The Minister of Transport is also given power, with the approval of the Treasury, to make advances, whether by grant or loan, on such terms and conditions as he thinks fit, for " the construction, improvement, or maintenance of roads, bridges, or ferries." He may not, however, without the consent of the local authority, or of the Minister of Health, impose conditions on a local authority which entail expenditure. The Act further provides that the Minister, for the purpose of making the above advances, may, after consultation with the Roads Committee and the local authorities affected, classify roads in such manner as he thinks fit. This has now been done and the most important roads of the country have been classified as Class I or II, and the remaining roads have remained unclassified. From statistics of motor taxation supplied by the County and County Borough Councils, the Minister publishes an annual Census of motor vehicles in different categories. A Census of traffic is also carried out generally and particularly.

The Road Fund was established by the Roads Act, 1920, and authorizes County and County Borough Councils to levy licence duties on mechanically propelled vehicles. These duties are paid into the Road Fund. The Fund is applied in grants towards the improvement of roads and the payment of half salaries of local engineers and surveyors and of other grants.

By the Finance Act, 1936, the balance of the Fund was appropriated In future, the Fund will not receive the proceeds of licences but will be fed from Exchequer Grants.

The London and Home Counties Traffic Advisory Committee was constituted under the London Traffic Act, 1924. It is appointed for the purpose of giving advice and assistance to the Minister in connection with the exercise and performance of his powers and duties with a view to facilitating and improving the regulation of traffic in and near London.

Select Committee on Road Accidents. In July, 1933, a report was issued of the Select Committee appointed to consider the Road Traffic (Compensation for Accidents) Bill. It seems to the Committee that where a pedestrian, without negligence on his part, is injured by a motorist, whether negligent or not, the injured person should be entitled to recover damages.

State Control of Main Roads. The Minister of Transport announced in July, 1936, that, to secure more uniform standards

to accord with modern requirements on the main through traffic routes, the Government had decided to introduce a Bill to effect the transfer from the County Councils to the Minister of Transport of the full responsibility for the maintenance and improvement of some 4,500 miles of the more important roads used largely for through traffic and described as trunk roads. Roads in the metropolitan and county boroughs in England and Wales, or the large burghs of Scotland, are not to be included. The transfer is to include bridges, and will come into operation at the beginning of the next financial year.

Road and Rail Transport

A Royal Commission on Transport was appointed in July, 1928, to consider the problems arising out of the growth of road traffic with a view to securing the employment of available means of transport in Great Britain to the greatest public advantage.

As a result of the Reports of the Commission, the Road Traffic Act, 1930, was passed. This is described in detail in *Local Government of the United Kingdom* (Pitman). The Final Report of the Royal Commission on Transport was issued in January, 1931

The London Passenger Transport Act, 1933, which was introduced by the Government, constituted the London Passenger Transport Board appointed by a "body of appointing trustees." The appointing trustees consist of the Chairman of the London County Council, a representative of the London Traffic Advisory Committee, the Chairman of the Committee of the London Clearing Bankers, the President of the Law Society, and the President of the Chartered Accountants of England and Wales.

A Conference on Road and Rail Transport was appointed in 1932 under the chairmanship of Sir Arthur Salter, to consider the principles relating to the use of roads by heavy motor vehicles and the contribution which such users should make. The result of their deliberations was the passing of the Road and Rail Traffic Act, 1933.

The Road and Rail Traffic Act, 1933, made provision for regulating the carriage of goods on roads by motor vehicles, and for controlling the use of vehicles on certain roads, amended the provisions of the Road Traffic Act, 1930, relating to the wages, hours, and other conditions of employment of persons employed in connection with motor vehicles, amended also the law relating to railways, and made provision for constituting a council to advise on questions in connection with the means of, and facilities for, transport.

The Road Traffic Act, 1934, provides the following—

Speed limit on all motor vehicles of 30 miles an hour which will apply generally in any "built up area," that is to say, any area where a system of street lighting not more than 200 yards apart is maintained.

A test for a driver who did not hold a licence before 1st April, 1934.

Holders of licences before 1st April, 1934, may on conviction be disqualified from holding licences until they have passed the driving test.

Schemes for crossing places for pedestrians are to be allowed and the Minister may make regulations. Pedestrians may be fined for crossing the road against the regulations.

Pedal cycles must bear a white patch on the rear mudguard, and it is an offence to sell for use on a bicycle a reflector which does not comply with statutory requirements as to practical efficiency.

Penalty of disqualification for careless driving may be imposed on a first conviction.

The Act also amends the law with regard to insurance policies for third party risks, with a view to safeguarding further the position of parties in motor accidents.

The Committee on Road Safety was appointed by the Minister of Transport in October, 1934. The Chairman is Viscount Goschen, the Chairman of the Transport Advisory Council.

Electricity Supply

THE ELECTRICITY (SUPPLY) ACT, 1919, provides for the appointment of Electricity Commissioners, not exceeding five, by the Ministry of Transport. This Act was passed as the result of the report issued in May, 1918, of the Committee appointed by the Board of Trade on the question of electric power supply. Through these Commissioners the Ministry of Transport may exercise any of their powers and duties under the Electric Lighting Acts, or under any local Acts relating to the supply of electricity. Certain powers are reserved to the Minister, *e.g.*, the confirmation of Special Orders, consent to wayleaves under Sections 22 and 26 of the 1919 Act. The Electricity Commissioners may, after holding local inquiries, by Special Orders create districts, and constitute and incorporate for each such district a Joint Electricity Authority or Advisory Board. Such authority shall include representatives of local authorities and companies, of large consumers of electricity within the district, and of labour. Several of these authorities have been constituted, including one for London and the Home Counties.

THE STATUTORY GAS COMPANIES (ELECTRICITY SUPPLY POWERS) ACT, 1925, facilitates the supply of electricity by statutory gas companies.

THE ELECTRICITY SUPPLY ACT, 1926, established The Central Electricity Board. It consists of a chairman and seven members appointed by the Minister representative of various interests, but not holders of electricity securities or members of Parliament. The functions of the Board include the selection or closing down of generating stations, the purchase of bulk supplies, the provision of main transmission lines (the "Grid"), the provision for standardization of frequency, and fixing tariffs for supplies. The Board may borrow to an amount of £33½ millions, repayable within 60 years, and may issue Central Electricity Stock. The Board is assisted by a general manager, secretary, solicitor and a staff of engineers.

Civil Aviation

Civil aviation is under the control of the Director of Civil Aviation at the Air Ministry.

PRIVATE FLYING. In July, 1933, the Secretary of State for Air appointed a committee under the chairmanship of Lord Gorell "To examine the requirements of the present air navigation regulations, with particular reference to those governing private flying, in such matters as certificates of air-worthiness; to consider whether, and in what respects, the present system of control by the Air Ministry should be modified by way of devolution or otherwise; and to make recommendations in regard to these and any cognate questions which may be remitted to them by the Secretary of State."

In December, 1934, it was announced that the Director of Civil Aviation was raised in status to Director-General of Civil Aviation. Civil aviation is to be segregated from the military side, and in future no question of civil aviation will come before the Air Council. The Air Council would in future confine itself exclusively to the military side of the work of the Air Ministry. The constitution of the civil aviation side will be the Secretary of State, the Under Secretary of State, and the Director-General of Civil Aviation.

In future the Air Council is not to have the civil aviation Vote before it. This will be determined by the Secretary of State personally on the advice of the Under-Secretary in collaboration with the Director-General of Civil Aviation

CHAPTER XXIII

THE POSTAL SERVICES

The Post Office

DURING the reign of Henry VIII the " Posts " were established in various parts of the country, but they were retained for the exclusive use of the sovereign. Gradually the service was extended, the first English postmaster of whom we have any knowledge being Sir Brian Tuke, in 1533. Under Queen Elizabeth the privilege of sending a letter by post was extended to the public. The department was established by statute in 1660. The idea of the penny post originated with William Dockwra, a London merchant, who, on 1st April, 1680, established over four hundred receiving offices in the City of London for the receipt and dispatch of letters within that area for a fee of one penny. The Duke of York was "renting" the Post Office from the Government and complained of infringement of his monopoly. His claim was upheld and the penny post discontinued.

Sir Rowland Hill's system of a uniform penny post came into operation in 1840. At that time the inland rates for " single " letters were from 4d. for 15 miles to 1s. for 300 miles, and thereafter 1d. per 100 miles. The reformer's proposals were for a uniform inland penny postage for letters up to half-ounce in weight, a penny to be charged for each additional half-ounce.

The office of Postmaster-General dates from 1657. The first mail coach ran in 1784. As the office was created after the enactment of the Place Bill of 1707, the Postmaster-General was excluded from a seat in the House of Commons until a statute of 1866. The Postmaster-General is a large revenue collector, a banker, and undertakes other duties of a miscellaneous character. He is also, in normal times, the largest Government employer.

ADMINISTRATION. The Postmaster-General is assisted by an Assistant Postmaster-General, the Director-General, Deputy Director-General and other members of the Post Office Board who, with their staffs, exercise control over the whole organization of the Post Office.

THE POST OFFICE BOARD. The Post Office Board, which began its duties in April, 1934, is composed as follows—

Chairman: Postmaster-General; Deputy-chairmen: Assistant Postmaster-General and Director-General.

Members: Deputy Director-General; Comptroller and Accountant

General; Engineer-in-Chief; Director of Establishments and Personnel; Public Relations Officer; Regional Director for Scotland; Director of Postal Services; Director of tele-communications; Director of Savings; and Secretary to the Board.

FUNCTIONS OF THE BOARD. The functions of the Board are generally to advise on matters of Post Office policy, broad issues of administration, and to undertake periodical reviews of the work of the various departments It will be able collectively to devote itself to the various matters mentioned above, and also to promote and encourage the work of the various Post Office units.

The newly-appointed Director of Establishments and Personnel has been made a member of the Board. This is a new appointment so far as the Post Office is concerned. The Post Office employs some 230,000 men and women; and, therefore, has the largest number of State employees of any department. It has now been decided that a high official should be appointed who should devote himself exclusively to establishment and personnel and the interests and work of the Post Office staff.

In January, 1934, there was appointed a Director-General of the Post Office and a Deputy Director-General. These posts have hitherto been designated "Secretary to the Post Office" and "Second Secretary."

The positions of Secretary and Second Secretary to the Post Office were thus abolished: the new designations are the result of the recommendation expressed in the Bridgeman Committee's Report. (See page 142.)

The principal departments and their functions are—

(1) POSTAL SERVICES DEPARTMENT, under a Director (mails branch and postal traffic section)

FUNCTIONS. Collection and delivery of letters, post cards, newspapers, books, circulars, and parcels. Payment of Naval, Military, and Air Force Separation Allowances and Pensions, of War, Old Age, Widows' Pensions and Orphans' Allowances; and Unemployment Assistance Allowances in certain cases.

It collects certain Local Taxation Licences for County Councils and County Borough Councils. The Post Office sells National Insurance Stamps on behalf of the Ministry of Health and the Ministry of Labour, National Savings Certificates and Stamps, Income Tax Stamps, Entertainment Duty Stamps, and Inland Revenue Documents and Stamps.

(2) TELE-COMMUNICATION DEPARTMENT, under a Director operates the inland telegraph and telephone services, cable and radio services with certain foreign countries and Dominions, and telephone services with the Continent, the United States of America, and Canada.

(3) ESTABLISHMENTS AND PERSONNEL DEPARTMENT, under a Director has much similar functions to the Establishments Branch or Division of the other Civil Service Department. Its importance will be appreciated when it is recognized that there are approximately 230,000 Post Office servants. It includes chief clerks, establishments staff, medical, investigations, and building branches, architectural staff and registry hitherto operated separately in the Secretary's Office.

(4) ACCOUNTANT-GENERAL'S DEPARTMENT, under the Comptroller and Accountant-General, who supervises all the financial business and is Accounting Officer for the Department.

(5) CENTRAL TELEGRAPH OFFICE, under a Controller, is the centre of the inland and foreign telegraph system.

(6) ENGINEERING DEPARTMENT, under the control of the Engineer-in-Chief, has its headquarters administration in London.

(7) MONEY ORDER DEPARTMENT, under a Controller, was established in 1861, and handles the money order and postal order business The management of National Savings Certificates is a very important part of the operations of this Department. It also deals with the payment of Old Age Pensions, which were introduced in 1908, and Widows' Pensions and Orphans' Allowances which were introduced in 1926.

(8) PUBLIC RELATIONS DEPARTMENT, under a Public Relations Officer. This post was established as from 1st October, 1933, and is a further step in the continued adoption by the Department of modern commercial methods. The first holder of the office was the Secretary to the Empire Marketing Board, which terminated on 30th September, 1933. This Department comprises the former sales and public section and the film unit and library.

(9) SAVINGS BANK DEPARTMENT, under a Director of Savings and Controller. Savings Banks were established in 1861. This Department is responsible for deposits amounting to about 285 million pounds, and investments of about 200 million pounds. It arranges for investments in Government Stock and the issue of annuity policies.

(10) SOLICITORS DEPARTMENT, in charge of a solicitor with assistant solicitors and professional clerks.

(11) STORES DEPARTMENT, under the Controller of Stores, holds stocks of general and engineering stores.

TRAVELLERS' CHEQUES AND CRUISING WARRANTS were announced as available as from 18th May, 1933. The new service includes the issue of travellers' warrants of the fixed sum of £6, and up to six in number, which can be cashed at will at any

savings bank post office in the country and without surrendering the bank book.

Arrangements have also been concluded with the British shipping lines to enable Post Office depositors who were taking a cruise to obtain their money on board.

THE LONDON AND PROVINCIAL ORGANIZATIONS comprise Surveyors, Postmaster-Surveyors, Postmasters, District Managers of Telephones, and Sub-Postmasters. They are outside Headquarters, but constitute a very vital part of the organization.

THE CONTROLLERS of the London Postal Service and the London Telephone Service, while in a sense outside the Headquarters organization, are very important Departmental chiefs with large staffs under their control.

POST OFFICE REFORM was the subject of a memorial submitted to the Prime Minister in November, 1931, by upwards of 200 members of Parliament recommending the appointment of a Committee to review the whole question of the organization of the Post Office, and to frame detailed proposals for its improvement in the light of the experience and circumstances of the present day.

In February, 1932, the Government asked Lord Bridgeman, Lord Plender, and Sir John Cadman to "examine the character and organization of the Post Office and to consider whether any changes should be effected in its constitution which would tend to improve the efficiency of the service." This followed the memorial referred to above.

THE REPORT OF THE BRIDGEMAN COMMITTEE ON THE ORGANIZATION OF THE POST OFFICE was issued in September, 1932.

The Committee rejected the proposal that either the telegraphs or the telephones shall be transferred to an independant corporation, whether of the public utility type or any other.

The Committee had a good word to say for the staff, whose members are not invariably at fault when a dispute occurs in which a member of the public is affected. Its further recommendations are referred to in the schemes which have been put into operation as follows—

A POST OFFICE CENTRAL ADVISORY COMMITTEE was appointed by the Postmaster-General in January, 1933, under the chairmanship of Major the Hon. J. J. Astor, M.P., to act in a consultative capacity on matters of general Post Office policy and to serve as a further connecting link between the Post Office and the public. The Bridgeman Committee were strongly of the opinion that closer contact should be established between the Post Office and the public, and suggested that the new council should act with the Postmaster-General in a consultative capacity on matters of general Post Office policy.

By constituting a body representative of all kinds of views and interests, who will be entitled to raise items for discussion at the meetings which will be held at regular intervals, it is hoped that not only will the general body of Post Office customers be more closely associated with the policy of the Department, but the council will be able to assist the Postmaster-General in dealing with claims in connection with postal, telegraph, telephone, and other services that are put forward by particular interests such as demands for lower telephone charges, penny postage, sixpenny telegrams, and so on.

BUSINESS MEN'S COMMITTEE. The appointment of a committee of business men to advise on the telephone and telegraph service is a further step in the policy of associating the Post Office with modern commercial experience and development. The Post Office Advisory Council, the Post Office Publicity Committee, and the Post Office Film Committee are other instances where this policy has been adopted and has been functioning with great success.

THE POST OFFICE FUND was established by Part IV of the Finance Act, 1933. This is to give effect to the recommendations of the Bridgeman Committee in relation to Post Office Finance.

Hitherto, the Exchequer had taken the whole of the Post Office surplus in any financial year, and the Bridgeman Committee recommended that, after making a fixed annual contribution to the Exchequer, the Post Office should be allowed to use its surplus for the improvement and development of its services.

Section 38 requires the Postmaster-General, on or before the 31st October, 1934, and each succeeding year, to prepare a statement, to be laid before Parliament, showing the surplus of revenue over expenditure during the last preceding financial year, taking into account the value of work done without payment for or by other Government Departments; but not the amount received in respect of wireless licences.

By Section 39, when it appears that this surplus exceeds £11,000,000, a special Post Office Fund is to be established for such surplus which may, subject to certain conditions, be used for development.

Local Advisory Committees

The Post Office is making further efforts to ascertain the wishes of business men regarding improvements and extensions of its services. Postal, telephone, and telegraph advisory committees have either been established or are in process of being established in Birmingham, Leeds, Bradford, Newcastle, Bristol, Cardiff, Edinburgh, Belfast, and Leicester. Representatives of the local Chambers of Commerce, city and municipal councils, and leading

business men are members of the committees, which are also attended by the district heads of the Post Office's various services.

Similar committees have already been established in Liverpool, and a number of other centres, and it is intended that the system shall be extended in the near future to cover all the principal towns in the country.

Air Mails

In 1919 the Air Mail was inaugurated between London and Paris. Since this date, the services have been extended to other parts of the world.

British Broadcasting Corporation

The British Broadcasting Corporation replaced the British Broadcasting Company, being instituted under Royal Charter on 1st January, 1927. The corporation is responsible to Parliament through the Postmaster-General. It is to carry on the broadcasting service "as a public utility service." The corporation has power to erect stations, print and publish papers, exploit wireless telephony, collect news, and acquire copyrights.

THE WIRELESS TELEGRAPHY (BLIND PERSONS FACILITIES) ACT, 1926, empowers the Postmaster-General to issue wireless receiving licences to blind persons without a fee. "Blind person" means any person (not being resident in a public or charitable institution, or in a school) who produces a certificate by or under the authority of the council of the county or county borough where he resides that he is registered as a blind person in that area.

THE BROADCASTING COMMITTEE appointed in April, 1935, under the Chairmanship of Viscount Ullswater, issued its Report in March, 1936. It recommended—

(1) The Charter of the B.B.C. should be extended for another ten years.

(2) The Governors should be increased from five to seven and be appointed by the Crown.

(3) The B.B.C. should receive not less than 75 per cent of receipts for purposes other than television, which should have a claim upon a proportion of the remaining surplus.

(4) That the recruitment of staff should be systematized and that vacancies should be advertised.

(5) That a standardized receiver be designed and sold.

(6) That responsibility for the cultural side of broadcasting should be transferred to a Cabinet Minister.

Television

In February, 1935, it was announced that the Government had accepted the Report of the Selsdon Committee on Television. A public service under the control of the British Broadcasting Corporation was inaugurated in the latter part of 1935 at a station built in Alexandra Palace. It was shown at Radiolympia, London, in August, 1936. If the experiment is a success it is hoped to create a network of other stations to cover the whole country. Lord Selsdon is the Chairman of an Advisory Committee which has been appointed to plan and guide the early development of the service.

CHAPTER XXIV

MISCELLANEOUS DEPARTMENTS

Board of Works and Public Buildings

THE administration of public buildings was in the hands of the Office of Woods and Forests until 1832, when the new department was established. To it was also assigned the control and management of public works and buildings, the expenses of which were defrayed out of the Crown revenues or by Parliamentary grants In 1806 this work had been assigned to the Surveyor of His Majesty's Works and Public Buildings. In 1832 the duties were transferred to the Commissioners of Woods, Forests, and Land Revenues. In 1851 a new department was formed known as the Board of Works and Public Buildings.

CONSTITUTION. This Board—the full title of which is the "Office of His Majesty's Public Works and Buildings"—consists of a "First Commissioner" and of the following *ex-officio* members, namely, the Principal Secretaries of State and the President of the Board of Trade. As in the other cases which have been noticed, the Board has only a nominal existence, and the department is practically under the charge of one responsible head, the First Commissioner; who is always a Privy Councillor. The Board is placed by Act of Parliament under the direction of the Treasury, whose sanction is required to any work not directly ordered by Parliament. All estimates for large public works are submitted to the Treasury, which department, also, appoints the Secretary, clerks, and ordinary employees of the office. The staff of the First Commissioner of Works includes a Permanent Secretary, and three assistant secretaries, and a considerable number of draughtsmen, surveyors, and clerks.

FUNCTIONS. The Board has the custody and supervision of the Royal palaces and Royal parks, and of all public buildings not specially assigned to the care of other departments, whether they are appropriated for Government offices, for national collections, or for the recreation and enjoyment of the public. The department, to which is assigned the Royal parks and pleasure gardens, came prominently to the notice of the public during the late war in consequence of its control of so many buildings in the public service.

Stationery Office

H.M. Stationery Office was established in 1786. It supplies all the books and stationery required by the various Government

departments. It has become the largest publishing house and publishes the Public General Acts of Parliament, which are issued either separately or in annual volumes bound complete. The various Bills ordered to be printed by the Houses of Parliament may be obtained from it, as well as the Minutes of Evidence and the Reports of the Royal Commissions and Departmental Committees which are appointed from time to time. The work assumes enormous dimensions at the time of a General Election and during the period preceding the taking of a Census of Population.

The London Gazette is published by the Stationery Office. It is the official publication of the Government and has been published continuously since 1665. It contains all information of an official character, including Proclamations, Orders, etc., issued by the Government. It notifies all the changes and appointments of naval, military, and air force officers; notices of bankruptcy and dissolution of partnerships; together with such orders of the Courts of Justice as are required to be published.

Administration. The Department is under the control of a Controller. He is also styled the King's Printer of Acts of Parliament There is a retail office at Kingsway, London, W.C.2, with branches in Manchester, Edinburgh, Cardiff, and Belfast.

Meteorological Office

The Meteorological Office was established as a Department of the Board of Trade in 1854, and in 1919 the Office was attached to the Air Ministry.

Administration. The control is now vested in a Director and a Committee appointed by the Air Council. The Office is charged with the duty of collecting meteorological observations from oceans and land areas all over the world. It maintains a number of stations for daily telegraphic reports upon which gale warnings and forecasts are based. It also collects for public use statistics about the weather. The office also administers the Observatories at Kew; Eskdalemuir near Dumfries; Valencia, County Kerry; and Benson, Oxon. The work of the British Rainfall Organization was transferred to the Meteorological Office in 1919.

Registry of Friendly Societies

A barrister was appointed in 1828 to certify the rules of Savings Banks, and in 1829 to certify those of Friendly Societies. In 1846 he was constituted Registrar of Friendly Societies. By the Friendly Societies Act, 1875, the Central Office of the Registry of Friendly Societies was created, consisting of the Chief Registrar and the Assistant Registrars for England.

ADMINISTRATION. The Registry is under the Chief Registrar

and Industrial Assurance Commissioner assisted by Assistant Registrars and Legal Assistants.

FUNCTIONS. The Registry exercises numerous and important functions under the Friendly Societies Acts, the Industrial and Provident Societies Acts, the Building Societies Acts, the Trade Union Acts, the Workmen's Compensation Acts, the Scientific Societies Act, the Trustee Savings Banks Acts, the Post Office Savings Bank Acts, the Loan Societies Act, the Shop Clubs Act, National Health Insurance Acts, Superannuation and other Trust Funds (Validation) Act, 1927, and certain local and private Acts.

There is also an Assistant Registrar for Scotland, who is subordinate to the Chief Registrar.

Under the Industrial Assurance Act, 1923 the Chief Registrar is charged with various powers and duties in relation to Industrial Assurance Companies and Collecting Societies, and in that capacity is styled the Industrial Assurance Commissioner.

The Committee on Industrial Insurance of the Lives of Children appointed in 1931, under the chairmanship of Sir Benjamin Cohen, K.C., reported in July, 1933, that all existing statutory provisions relating to the assurance of children under ten should be repealed, and the law dealt with in one statute. They made other recommendations respecting children under fourteen years of age.

Corporation of Trinity House

The Brethren of the Trinity House were incorporated in 1514 by Henry VIII, *inter alia* " for the relief, increase, and augmentation of the Shipping of this Realm in England."

Administration There are thirteen acting Elder Brethren, of whom two are selected from the Royal Navy, and eleven from the Merchant Service. In addition, there are eleven Honorary Elder Brethren, being members of the Royal Family or distinguished statesmen. They now act as the General Lighthouse Authority for England and Wales, the Channel Islands, and Gibraltar. They are the Chief Pilotage Authority in the United Kingdom, having the management of all matters relating to pilots and pilotage in the London area, English Channel, and certain other districts on out coasts. They possess estates and almshouses, and award pensions and bounties to distressed mariners and their widows. These are administered under the control of the Board of Trade. As Nautical Assessors, two of the Acting Elder Brethren in turn assist the Judges of the Admiralty Division of the High Court marine cases

Office of the Public Trustee

This office was created by the Public Trustee Act, 1906, for the purpose of enabling the State, through an official called the Public Trustee, to act as an executor or trustee to any person

who may desire it, either under a will or under a settlement. The reason for the creation of the office was the difficulty of finding trustees and the frequent occurrence of frauds. It has met with wide popular acceptance, and a branch of the department has been opened in Albert Square, Manchester.

The Act was primarily intended for the benefit of small estates, but the Public Trustee is not confined to administer the affairs of people in narrow circumstances, and the office has become one of considerable importance. Any person may appoint the Public Trustee to act under a will by means of a clause to the will or a codicil thereof. The appointment may be made either solely or in conjunction with another person or a number of persons. Since the passing of the Law of Property Acts, 1925, increased reference has been made to the Public Trustee.

The Consolidated Fund of the United Kingdom is liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted.

From a constitutional standpoint the office is of interest as affording an exception to the maxim "The King can do no wrong." It is also an exception to the rule that the Crown cannot be a trustee. Full particulars may be obtained on application at the office of the Public Trustee, Sardinia Street, Kingsway, London, W.C.2, or the Branch Office, Albert Square, Manchester.

Lord Privy Seal

The holder of this office is invariably a Cabinet Minister, and his official duties being, although constitutionally important, of by no means an onerous nature, the post is usually conferred upon some eminent politician, who, while unfitted from age or other reasons for undertaking heavy administrative duties, may be competent to render valuable assistance in the Cabinet. During the Labour Government in 1924, the office was held by the Deputy Leader of the House of Commons.

The departmental duties consisted at one time in applying the Privy Seal to a certain number of public instruments, an act which, however, was abolished in 1884. It was by means of the Seals—in the first instance and primarily, the Great Seal, but afterwards and in a secondary degree, the Privy Seal—that in earlier periods of our history the only known restraint could be imposed upon the acts of the Crown. From the time of Henry VIII, the Privy Seal was the warrant of the legality of grants from the Crown, and the necessary authority to the Chancellor to affix the Great Seal. All grants of

the Crown for appointments to office, creation of honours, licences, patents of inventions, pardons, etc., must be made by charters or letters patent under the Great Seal; and the command to the Lord Chancellor to prepare such an instrument is in all but a few excepted cases conveyed by means of a writ or Bill sealed with the Privy Seal.

Civil Service Commission

The Civil Service Commission is situated at Burlington Gardens, London, W.1. *Administration.* It consists of a First Commissioner and Assistant Commissioner and Secretary, and a Director of Examinations with staff. Until 1855 appointments to the Civil Service were made by nomination only, but from that date qualifying examinations were introduced. In 1870 the principle of open competition was adopted. It is no longer necessary that candidates for the diplomatic service should give any assurance as to the possession of private means.

Financial Departments

The Financial Departments of the Government are dealt with in Chapter XXXIV.

Development Commission

The Development Commission was established by the Development and Road Improvements Funds Acts, 1909 and 1910.

Administration. It consists of a Chairman, Vice-Chairman, and five other Commissioners. Its functions are to advise the Treasury in the administration of a national fund for the development of agriculture, fisheries, and other analogous economic resources of the United Kingdom.

Empire Marketing Board

The Empire Marketing Board, of which the Secretary of State for Dominion Affairs was Chairman, was constituted in May, 1926, for "furthering the marketing in this country of Empire products." The Board was largely guided by the Reports of the Imperial Economic Committee, who were asked to make recommendations regarding schemes upon which expenditure might usefully be incurred out of the Fund. The work of the Board was divided into (*a*) Research, and (*b*) Economic Investigation, the latter including Press Advertisements, Poster Campaign, Exhibitions, and Shopping Weeks, Lecture Campaign, and Cinema. The National Economy (May) Committee recommended, in 1931, its abolition, and it was discontinued in September, 1933. The market intelligence services which had been carried on by the Board have continued under the Imperial Economic Committee, and the scientific research work which has been done by the Board has been taken over by other institutions.

Forestry Commission

Administration. The Forestry Commission comprises a Chairman and Technical Commissioner with eight Commissioners and a Secretary.

In 1931, the Chancellor of the Exchequer agreed to ask Parliament for an annual sum of £450,000 for the work of the Commission for five years. If there were added to that the working receipts of approximately £150,000 a year, there was at the disposal of the Commission £600,000 for five years. This would enable them to maintain a planting programme of at least 20,000 acres a year and to acquire a similar area of plantable land each year so that the rate of planting might be evenly pursued.

Office of Commissioners of Crown Lands

Administration. The Minister of Agriculture and Fisheries is *ex-officio* Commissioner, but apart from that fact the Department is quite independent of the Ministry. There is a Permanent Commissioner and Secretary and an Assistant Commissioner and Heads of Branches.

The Crown Lands Act, 1927, incorporates the Commissioners of Crown Lands. The Act enables the Commissioners to sell and let on lease Crown lands, including any right or privilege therein. Regulations are laid down respecting sales, buildings and mining leases, and leases generally. Crown land may be dedicated for streets, roads, squares, gardens, open spaces, etc., and in accordance with the Town and Country Planning Act, 1932, agreements may be made in connection with planning schemes.

Charity Commissioners

The Charity Commission was created by the Charitable Trusts Act 1853, "for the better administration of charitable trusts in England and Wales."

Administration. The Commission consists of four persons; three are paid, and two at least, one of whom must be the Chief Commissioner, must be barristers of at least twelve years' standing. In 1879 the powers previously exercised by the Endowed Schools Commissioners were transferred to the Charity Commissioners. By Orders in Council the powers of the Commissioners over all endowments for purely educational purposes were transferred in 1899 to the Board of Education. The work of the Charity Commissioners has been brought into close touch with the community under the War Charities Act, 1916, and the Blind Persons Act, 1920.

SECTION VI
THE ADMINISTRATION OF JUSTICE

CHAPTER XXV
THE JUDICIAL SYSTEM

BROADLY speaking, the maintenance of public order is effected by two kinds of agencies, those known as Police and Justice. Justice is the constant and perpetual will to give every man his due. (*Justinian.*)

The latter is concerned with "right" or "law" (*jus.*), that is, with the *adjustment* of disputes arising out of alleged breaches of rules of conduct.

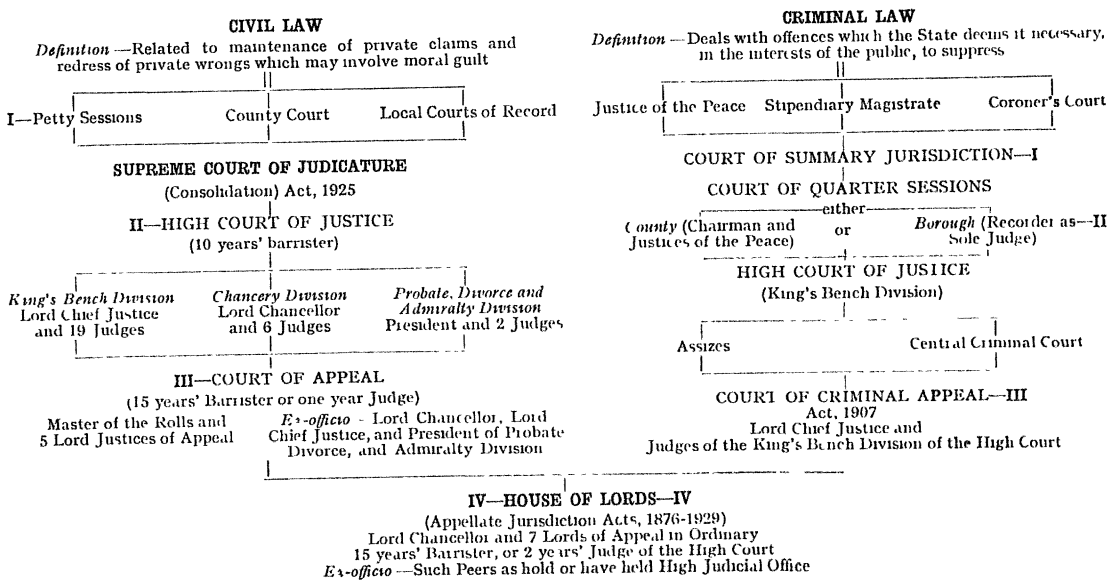
A law, in the legal sense, is any rule which will be enforced by the Courts. Law provides the citizen with a mechanism of life whereby all the incidents of his relations with his fellow-beings are regulated and the element of friction eliminated by definite and familiar adjustments. (*Lord Macmillan*)

Law ordinarily is negative. It is intended to curb our impulses, to control our relation to others rather than to develop our initiative. It is static rather than dynamic. A law is a command given by a political superior (*i.e.*, the Legislature) or sovereign to a political inferior or subject, and enforced by a sanction or penalty. Bentham, in his *Fragment on Government*, and Austin, in his *Province of Jurisprudence Determined*, resolve every law into a *command* of the law giver, an *obligation* imposed thereby on the citizen, and a threat in the event of disobedience to a *sanction*.

The law of a country is the system which orders the conduct of its citizens. Each rule which we call a law is a part of the whole which we call *the* law. England is governed by law common to the whole country.

HISTORY. The Mosaic law followed by the Greek Homeric poems are the earliest laws known to men. Social necessities and social opinion are always more or less in advance of law. Natural law is stable. Society is progressive. The agencies by which law is brought into harmony with society are Legal Fictions, Equity, and Legislation. Before the invention of writing and during the infancy of the art, an aristocracy, who were the depositaries and administrators of law, formed the only expedient by which accurate preservations of the customs of the race or tribe could be approximated. This was the epoch of Customary Law. The law thus known was true unwritten law.

TABLE OF PRINCIPAL EXISTING COURTS



CODES. From the period of Customary Law comes another sharply defined epoch in the history of jurisprudence, viz : the era of Codes, those ancient Codes of which the Twelve Tables of Rome were the most famous specimens. The most celebrated system of jurisprudence known to the world begins, as it ends, with a code. The theoretical descent of Roman jurisprudence from a code, the theoretical agreement of English law to immemorial unwritten tradition, were the chief reasons why the development of their system differed from the development of ours.

Code Napoleon. The Convention of the French Revolution which sat from 1792 to 1795 did the constructive work of the first French Revolution. A commission of the Convention produced the Code Napoleon. It looks back to the Roman Law in the sense that the old French Law, which was its basis, was derived from the Roman Law, and also in the fact that, when revised in the light of the Revolution, it became another complete code, like that of the Roman Empire, which could be, and was, largely adopted by other countries, both in Europe and in Central and South America.

CLASSIFICATION OF LAW. Law is of two kinds—Common and Statute. Common law and statute law alike derive their moral sanction from the consent of the people evidenced in the former case by their acquiescence in customs which they have found convenient and equitable, and in the latter case by their participation in the process of its enactment. (*Lord Macmillan.*)

1 COMMON LAW. Common Law is the great body of the law which is unenacted. It is unwritten law in contrast with statute law. We have no authoritative text of the Common Law. There is no one form of words in which it has as a whole been expressed at any time. It is common to the whole country. It is the law of the temporal Courts, for as far back as our reports go we find judges assuming that there is a Common Law not made by any legislature.

Common Law is, in theory, traditional law. It has grown rather than been made. It has been written down sometimes by one man, as in Athens, where the early laws were written down by Draco and again later by Solon. In this country they were thus written down by Ethelbert and by Alfred. They were ultimately welded together by the State's judges into one Common Law. The record of the Common Law is to be found in the Register of Writs and the Plea Rolls of the King's Courts. Much of the traditional common law is now embodied in statutes.

II. STATUTE LAWS. Statute Laws are made by the legislature, and are what are known as Acts of Parliament or, by lawyers, as

statutes, the origin of which we definitely know. When we speak of an individual law we generally mean a statute. When we speak of the law, we mean the system of law which includes both Statute and Common Law. Our Statute Law dates from 1235, in the reign of Henry III. The statutes assume the existence of the Common Law. They are the addenda and errata of the book of the Common Law. Where Statute Law and Common Law come into conflict, Statute Law prevails; and no development of the Common Law can repeal an Act of Parliament. It is not unknown, however, for a statute to become practically obsolete, though unrepealed, *e.g.*, The Lord's Day Observance Acts.

ALTERNATIVE CLASSIFICATION. Law may also be divided into Civil Law and Criminal Law.

CIVIL LAW relates to the maintenance of private claims and the redress of private wrongs which may not involve moral guilt. The method of the tribunal is compensation and restitution.

CRIMINAL LAW deals with offences against the State and their punishment on behalf of the community. It aims at repressing a defiance of authority. The method of the tribunal is punishment and reformation. The law takes cognizance of moral guilt only when it is illegal.

CASE LAW. The habit of the judges in deciding one case in accordance with the principle which governed a former case leads to a gradual formation by the Courts of fixed rules for decision, which are, in effect, laws. This is known as Case Law. Case Law is recorded in the Law Reports. The system of Case Law is peculiar to England and the countries which have derived their law from England. Its essential principle is that decided cases are binding authorities for the future unless suspended by statute.

The theory or fiction of our Case Law is that the judge does not make new law, but only declares what was already law. "Whenever a court or this house acting judicially declares the law, it is presumed to lay down what the law is and was, although it may have been misunderstood in former days." (*Lord Davey.*)

Judge made, or Case, Law is law established by previous decisions of our Courts and evidenced by those numerous Law Reports which fill the shelves of our legal libraries; not only is the volume of the law so evidenced vast, but many of the principles established by reported cases are of very far-reaching importance. Many questions fall to be decided by Case Law alone, and even when the question turns on the construction of a statute, it may be of vital importance as supplying canons of

interpretation. "The true use of all decisions is to endeavour to ascertain the principle upon which the decision is based." (*Fletcher Moulton.*)

Those who admire our legal system claim that the prevalence of Case Law is an advantage, because it tends to make the principles underlying our system elastic and progressive and subject to continuous improvement, as they are being applied to ever new combinations of facts; and, on the other hand, the detractors of our system deplore its inelegance and want of scientific arrangement and harmony, and the other defects which they attribute to the absence of a scientific code.

The Judicature Act, 1873

The function of the Judicature is to decide whether the general provisions of the law apply to particular cases. The Judicature Act, 1873, codified the English judicial system, and conferred upon one and the same tribunal the jurisdiction which before the Act was exercised separately by the Courts of Equity and the Courts of Common Law. It had three purposes—

(1) To reduce the historically independent Courts of Common Law and Equity to one Supreme Court of Judicature, consisting of the High Court of Justice and the Court of Appeal.

(2) To establish for all Divisions of the Court a uniform system of Pleading and Procedure.

(3) To provide for the enforcement of the same rule in cases where Chancery and Common Law had hitherto recognized different rules.

THE SUPREME COURT OF JUDICATURE founded by the Supreme Court of Judicature Act, 1873, came into operation in 1875, and consolidated all the superior Courts of the Kingdom, except the House of Lords and the Judicial Committee of the Privy Council. The Supreme Court of Judicature consists of the High Court of Justice and the Court of Appeal. It replaced the following Courts—

1. Common Law.
2. King's Bench.
3. Exchequer.
4. Common Pleas.
5. Exchequer Chamber.
6. Chancery.
7. Appeal in Chancery.
8. Admiralty.
9. Probate.
10. Divorce and Admiralty Causes.
11. London Court of Bankruptcy.
12. Common Pleas at Lancaster.
13. Common Pleas at Durham.

The Supreme Court replaced all these by a single Court of first instance, now known as His Majesty's High Court of Justice, and a single Court of Appeal, known as His Majesty's Court of Appeal.

The Chancellor of the Exchequer and the Lord High Treasurer no longer have judicial powers formerly exercised in the Court of Exchequer.

The Supreme Court of Judicature Act, 1925

The Supreme Court of Judicature (Consolidation) Act, 1925, consolidates the Judicature Acts, 1873 to 1910, and other enactments relating to the Supreme Court of Judicature in England and the administration of Justice therein. The Act contains 227 sections and 6 Schedules. It constitutes a code of our judicial system in the High Courts.

THE HIGH COURT OF JUSTICE has three divisions—

(1) King's Bench Division (into which have been merged the Courts of King's Bench, Exchequer, and Common Pleas).

(2) Chancery Division.

(3) Probate, Divorce, and Admiralty Division.

1. *King's Bench Division.* This consists of Lord Chief Justice and nineteen puisne Judges. Additional Judges can be appointed by the King pursuant to an address from both Houses of Parliament. The Supreme Court of Judicature Amendment Act, 1934, increased the number of Judges to nineteen. The King's Bench Division deals with Criminal Law, and, on the civil side, with Common Law, Commercial Law, etc. The Judges on Assize hear not only criminal cases but also civil cases connected with the King's Bench Division under the Commission of *Nisi Prius*—"unless before" the opening of the Court the case has been tried in London.

2. *Chancery Division.* This consists of the Lord Chancellor, and six puisne Judges. The Lord Chancellor is a barrister of at least fifteen years' standing, and being the judicial head of the Government, he usually vacates office with a change of Ministry.

3. *Probate, Divorce, and Admiralty Division.* This consists of a President and two puisne Judges.

The divisions themselves might be abolished without an Act of Parliament, simply by an Order in Council made on the recommendation of the Judges. The Common Pleas and Exchequer Divisions were abolished by an Order in Council, December, 1880. Any action may be brought in any one of the Divisions, but this rule is modified by practice.

The Administration of Justice Act, 1928, Section 6, provides that all jurisdiction vested in the High Court under the Act shall belong to all Divisions alike.

Judges

A JUDGE OF THE HIGH COURT must be a barrister of at least ten years' standing. The Act of Settlement, 1701, provided that Judges shall hold office during good behaviour, and their salaries ascertained and established, but upon the address of both Houses of Parliament it may be lawful to remove a judge. He is entitled to a pension after 15 years' service. The Administration of Justice Act, 1925, enables ex-judges, with their consent, to act as commissioners of assize.

A JUDGE OF THE COURT OF APPEAL must be a barrister of at least fifteen years' standing, or a Judge of the High Court for one year. The usual practice is to promote a Judge from the High Court to the Court of Appeal, but this is not always adhered to

A PUISNE JUDGE is one who is not President of one of the three Divisions of the High Court of Justice.

ROYAL COMMISSION ON THE DISPATCH OF BUSINESS AT COMMON LAW. The appointment of a Royal Commission under the Chairmanship of Lord Peel to inquire into the work of the King's Bench Division was announced in November, 1934.

The Terms of Reference are to—

Inquire into the state of business in the King's Bench Division of the High Court of Justice and report whether with a view to greater dispatch any reforms should be adopted, in particular—

What is the judicial strength required to deal with the business;

Whether there should be any further fusion or further subdivision of the divisions of the Supreme Court:

Whether any alterations should be made in the circuits of the judges;

Whether any further measures should be taken for a devolution of work from the High Court to the county court, and

Whether a retiring age should be imposed upon those appointed in the future to the bench of the Supreme Court.

Appellate Jurisdiction

COURT OF APPEAL. From the High Court of Justice appeal lies to His Majesty's Court of Appeal, consisting of—

1. President—Lord Chancellor.
2. Vice-President—in accordance with the Supreme Court of Judicature Amendment Act, 1934; Provided that it should not apply to any present members of the Court of Appeal.
3. Any person who has held the office of Lord Chancellor.
4. Any Lord of Appeal in Ordinary.
5. Lord Chief Justice.

6. President of Probate, Divorce, and Admiralty Division.
7. Master of the Rolls.
8. Five ordinary Judges—Lord Justices of Appeal.

As the other members are frequently engaged elsewhere, the Court of Appeal usually consists of the Master of the Rolls and the five Lord Justices of Appeal. Any person who has held the office of Lord Chancellor is also a member of the Court if, on the request of the Lord Chancellor, he consents to act.

THE HOUSE OF LORDS in its judicial capacity consists of the Lord Chancellor and seven Lords of Appeal in Ordinary, being barristers of at least fifteen years, or Judges of the Supreme Court who are appointed Barons for life, together with all members of the House of Lords who hold or have held "high judicial office."

High Judicial Office means one of the following: Lord High Chancellor of Great Britain or Ireland, Member of the Judicial Committee of the Privy Council, Lord of Appeal in Ordinary, Judge of Superior Court in Great Britain or Ireland.

Care should be taken to distinguish between a Lord of Appeal in Ordinary—a member of the House of Lords—and a Lord Justice of Appeal—a member of the Court of Appeal.

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL consists of the Lord Chancellor, the Lords of Appeal in Ordinary, and all members of the Privy Council who hold "high judicial office." It hears appeals from the Prize Courts, Indian and Colonial Courts, the Courts of the Channel Islands and of the Isle of Man, and from Ecclesiastical Courts, for all of which it is a final Court of Appeal.

The Appellate Jurisdiction Act, 1876, recognized and reformed the Appellate Jurisdiction of the House of Lords. It also provided a scheme by which the House of Lords and the Judicial Committee of the Privy Council—the two highest Courts of Appeal in the British Dominions—were eventually to be composed for the most part of the same official members.

Law Officers

THE ATTORNEY-GENERAL AND THE SOLICITOR-GENERAL These are the principal Law Officers of the Crown. They are the legal advisers to the Government or to any Government Department. They are appointed by the King on the recommendation of the Prime Minister, and vacate office with a change of Government.

1. They conduct, personally, certain prosecutions of unusual importance.
2. They file criminal information.
3. They defend the rights of the Crown.

The Attorney-General is summoned at the opening of Parliament to the House of Lords for the purpose of advising the

House. In practice, his attendance on the Peers is dispensed with. He is allowed, and expected, to be a member of the House of Commons.

The Attorney-General and Solicitor-General receive fees in addition to their salaries.

CORONER. The Coroners Act, 1887 (as amended by the Coroners (Amendment) Act, 1926), now regulates the law on this subject. The Act of 1926 provides that coroners thereafter to be appointed shall be barristers, solicitors, or legally qualified medical practitioners of not less than five years' standing. A coroner has jurisdiction, and it is his duty to hold an inquest *super visum corporis* when he has information that a death may be due to other than natural causes. He may also hold inquests on Treasure Trove. In the City of London the coroner is required to hold inquisitions relating to fires

Departmental Committee on Coroners' Duties reported in 1935. The principal recommendations were—

(1) The abolition of the "murder" verdict upon persons who have yet to stand their trial in a court of law.

(2) Better safeguards for persons under suspicion as the result of the course which an inquest is taking.

(3) Further restrictions of the numbers of persons eligible to serve as coroners by the imposition of more qualifications.

(4) Limitation of coroners' powers with a view to confining them purely to ascertainment of the cause of death.

A COURT may be defined as a place wherein law is judicially administered. Courts are either Courts of Record or not of record A Court of Record is one whose proceedings are placed upon record as a testimony of its authority.

The Royal Courts of Justice, in the Strand, London, were formally opened by Queen Victoria on 4th December, 1882, and began work on 11th January, 1883.

TERMS. Michaelmas Law Sittings begin 1st October, and the Long Vacation of the London Law Courts ends accordingly. Until some forty years ago the last toast drunk at a circuit mess at the Summer Assizes was, " The Morrow of All Souls." The meaning of this cryptic phrase was that the Courts at Westminster Hall did not re-open until 2nd November, a date fixed when William IV ruled over this realm. It was when Lord Selborne was Lord Chancellor, in 1883, that the Judges in Council approved of the Long Vacation commencing on 12th August, and Michaelmas Sittings on 23rd October. In 1907 another assembly of the Judges decided that the Long Vacation should run from 1st August to 12th October. In 1933 it was decided that the Long Vacation should terminate on 30th September.

From the days of Cromwell and throughout the reigns of the first three Georges there was quite a little collection of Acts dealing with the Long Vacation, and its gradual extension was due to the extreme importance attached to the ingathering of the harvest in those times.

" In most parts of the country the harvest is seldom or ever inned until three weeks after the Feast of St. Michael," said one Parliamentary statute, and consequently the inconvenience to jurors and litigants was great if they were called to London before they had " disposed and set in order all their winter husbandry and business."

LEGAL LANGUAGE. In the middle of the fourteenth century, when Edward III was celebrating his fiftieth birthday with great festivities, the King, as a boon to his subjects, made a decree that henceforth all pleadings and judgments in the English Courts of Law should be in English. Up to that time, ever since the Conquest, they had been in French. It is remarkable, however, that so wedded were the lawyers to the French tongue that it continued to be used by them voluntarily until the middle of the eighteenth century. If, for instance, reference is made to the law regarding husband and wife in a well-known law-digest published in the reign of George II, search must be made under the heading of " Baron and Feme," and similarly for the law of highways under " Chemin." Not until about 1731 did Parliament abolish the French and Latin to be found in the statutes and in Law Reports.

COMMITTEE ON LEGAL EDUCATION. In August, 1932, the Lord Chancellor appointed a Committee under the chairmanship of Lord Atkin to consider the organization of legal education in England with a view to—

(*a*) Closer co-ordination between the work done by the universities and the professional bodies; and

(*b*) Further provision for advanced research in legal studies.

The Committee's report, issued in July, 1934, strongly recommends the establishment of an advisory body to secure some co-ordination between the universities and the professional law schools.

Though the committee agree that it may be impossible to insist upon a graduation at a university as a necessary qualification of admission to the legal profession, they think it desirable that as many members as possible should have had the benefit of the more extended education connoted by a degree. The committee consider that when a student has taken a university degree in law both the Inns of Court and the Law Society might

extend the subjects of exemption from their own examinations of admission.

The advisory committee, they suggest, would keep in touch with the universities and the professional bodies. They would do much more than suggest that when a man had passed in certain legal subjects for his degree he need not take them again in the professional examination. They would go into the general question of the scope of teaching and examining and try to co-ordinate the teaching of particular subjects in university and professional law schools.

They would also try to secure some agreement as to the standard of general education to be attained before admission as a student of an Inn of Court or an articled clerk.

THE LORD CHANCELLOR'S COMMITTEE ON BUSINESS AND PROCEDURE AT THE LAW COURTS under the chairmanship of the Master of the Rolls, issued—

The First Interim Report on 24th February, 1933. The recommendations included—

(1) The shortening of the Long Vacation from ten weeks to eight weeks;

(2) The abolition of Grand Juries;

(3) The appointment of a common jury in civil cases to be at the discretion of the judge and not at the request of a party or parties

(4) Crown procedure to be simplified so that a party may originate an action instead of waiting for Crown officers to take proceedings;

(5) Devolution of Master's or Assistant Masters' duties in the Lunacy Department.

These recommendations were incorporated in the Supreme Court of Judicature (Amendment) Act, 1934.

The Second Interim Report was issued on the 20th December, 1933. The recommendations included—

(1) To abolish the Probate, Divorce and Admiralty Division; Probate work to go to the Chancery Division; and Divorce and Admiralty work to go to the King's Bench Division, and a Judge in Admiralty appointed.

(2) So far as the Assize Circuit system is concerned, to unite the North and South Wales circuits, and abolish the Assizes of Beaumaris, Mold, Brecon, and Presteign.

(3) Further to speed up of business and to relieve of Assize work by requiring Courts of Quarter Sessions to be held shortly before the date of the Assizes by a ruling that (save at Manchester, Liverpool, and the last town on any circuit) no civil

cases should be tried, except by leave of the Judge, unless it has been entered for trial twenty-eight days before the beginning of the Assize; by empowering the High Court to remit cases to the County Courts up to £200, and by increasing the jurisdiction of County Court Registrars from £5 to £10.

Certain of these recommendations were incorporated in the County Courts (Amendment) Act, 1934, and the Supreme Court of Judicature (Amendment) Act, 1934.

The Third and Final Report issued in 1936 deals with business arising from (i) Crown Office Rules; (ii) Procedure in Patent Actions; and (iii) Affidavit of Ships' Papers.

THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1934, carried out certain recommendations of the Committee set up by the Lord Chancellor to consider the application of the legal maxims. The main object of the Act was to deal with the old maxim "personal actions die with the person." The origin of this maxim was shrouded in mediaeval mystery, and the commonsense of it was very difficult to understand. The Act provided that the right of action was preserved after the death of an injured person.

The very great number of motor-car accidents now happening had made revision of this maxim an urgent and public necessity, and the Act dealt with this point. Such actions as those for libel, slander, or seduction where the presence of the plaintiff or defendant might be of the greatest importance, were not covered by the measure.

THE LAW REVISION COMMITTEE issued their second Interim Report in March, 1934.

Right to Recover Interest. When a plaintiff makes a money claim for a debt or for damages, interest from the date when the cause of action accrued can only be recovered if the claim is on a contract and the contract has an express or implied term under which interest is payable, or if there is a statutory provision allowing interest.

It is pointed out that the Court of Chancery has exercised discretion in certain cases, but that there is a very large number of claims for debts and for damages which are still subject to the old common law rule that interest cannot, in the absence of express agreement, be recovered.

Authorities are quoted showing that interest cannot be given at common law by way of damages for withholding a debt, and examples are given of distinguished lawyers regretting this. It is also pointed out that the law is not the same in Scotland, payment of interest being decreed there. "The exceptions that have been made to the rule by various statutes constitute a

serious inroad upon it," it is stated, "and we have come to the conclusion that the time has come when the old and rigid rule should now be altered.

"The courts, including all appellate tribunals should have the power to award interest in every case in their discretion where it is not already provided for by statute, or by the contract, or otherwise. . . . There is no doubt that the present state of the law provides a direct financial motive to defendants to delay proceedings.

"We think that the discretion should be vested in the judge rather than the jury. It is not a discretion which judges would feel any difficulty about exercising."

THE LAW REVISION COMMITTEE issued their fourth interim report in December, 1934.

It deals with the law relating to married women in England.

"This law," declares the report, "is very complex and elaborate, and raises many difficult questions. The matters, however, referred to this committee at the moment do not cover all such questions. They involve only two questions, which may be briefly stated for the present purposes as being—

1. Whether a husband should be liable for his wife's torts or other liabilities;

2 Whether a married woman's liability to answer for damages in contract or tort or otherwise should be personal, as in the case of a man or an unmarried woman (sometimes called in law a *feme sole*), or whether any judgment against her should be proprietary, that is to say, in terms limited to what is called her 'separate property.'

"If the judgment is to be personal it could in all cases be enforced against her by bankruptcy proceedings or by a committal order under the Debtor's Act.

"If the judgment is still to be proprietary, but it can only be enforced against her to the extent of her personal property.

"It is recommended that a husband shall no longer be liable to be sued or made responsible for his wife's ante-nuptial debts or contracts, or wrongs, or for any wrongs committed by his wife during marriage. Another proposal is that a wife shall be in the same position as a single person as regards ownership of property and as to her capacity to contract, her right to sue, her liability to be sued in civil proceedings, or in bankruptcy.

"We think that the day has now come when a married woman should alone answer for her own liabilities as if she were not married," says the committee. "If she incurs a debt we cannot see why it should not be enforced against her in the same way as it would be against anyone else."

CHAPTER XXVI

TRIAL PROCEDURE AND JURIES

Trial

TRIAL is a process of reasoning from evidence by means of which the truth as to the facts in issue may be elucidated. It was not common until the fourteenth century.

The methods previously adopted were—

1. Compurgation, Oaths, or Law Wager. Defendant's denial supported by a certain number of others (compurgators). (Abolished 1833.)

2. Battle. This was used in three cases—
 (*a*) Court of Chivalry.
 (*b*) Appeal of felony. (Abolished 1819.)
 (*c*) Action as to land by writ of right. (Abolished 1819)

3. Ordeal by—
 (*a*) Fire.
 (*b*) Water
 (*c*) Accursed morsel. (Abolished 1219.)

4. Trial by witnesses (*Secta*). Regularly appointed witnesses in a locality before whom transactions were made. The method was never popular and became obsolete before the clearer and more certain test of

5. Trial by Jury.

PROSECUTION. Prosecution is begun and carried through by—

1. A private person (the prosecutor), usually the sufferer by the criminal act; or
2. The police; or
3. The Director of Public Prosecutions.

Every person, whether injured by the crime or not, has, with some important exceptions, the right to set the criminal law in motion against an offender. Criminal proceedings are taken in the name of the King as representing the State.

If the complainant is poor, or is unwilling to prosecute, or if there is no complainant but the police, then the police may carry out the prosecution in a borough through the Town Clerk, who is usually a solicitor and instructs counsel. If he is not a solicitor he cannot act as such.

In Scotland a warrant can be obtained by petition to the Sheriff or Magistrate. The Procurator Fiscal gets a warrant without swearing, simply by giving written information.

THE DIRECTOR OF PUBLIC PROSECUTIONS was first appointed in 1879. He acts under the supervision of the Attorney-General, and the regulations governing his actions are subject to the approval of the Lord Chancellor and the Home Secretary. They provide that he shall prosecute in—

(1) All capital charges.
(2) Offences against the coinage.
(3) Cases of fraudulent bankruptcy.
(4) Cases when so directed by the Attorney-General or the Home Secretary.
(5) Cases when he considers it necessary. His consent is required in prosecutions for incest and for being an habitual criminal.

He is required to appear, either by himself or his duly appointed representative, for the Crown in criminal appeals.

TREASURY COUNSEL TO THE CROWN are appointed by the Attorney-General from among barristers. These comprise the Senior Counsel, the Second and Third Senior Counsel, and the First, Second, and Third Junior Counsel.

A CRIMINAL INFORMATION is a complaint on behalf of the Crown in the King's Bench Division in respect of some offence, not a felony, whereby the offender is brought to trial. There are two kinds of criminal information—

(1) Information *ex-officio*—a formal written allegation of an offence filed by the Attorney-General in the King's Bench Division.
(2) Information by the Master of the Crown Office—a formal written suggestion of an offence, filed in the King's Bench Division by the Master of the Crown Office at the instance of an individual.

BILL OF ATTAINDER. Apart from the three modes of prosecution referred to above, there is another (and very rare) method of criminal proceeding—the Bill of Attainder. It is a criminal proceeding by the High Court of Parliament. It is a legislative Act, and is introduced in either House, and after passing both Houses and receiving the royal assent it becomes an Act. Its original object was to punish those who fled from justice.

Procedure

The systems of procedure were regulated and reformed by the Judicature Acts. Each party in turn is required to state the material facts on which he relies; he must also deal specifically with the facts alleged by his opponent. In criminal prosecutions, after the commitment by the magistrate, the proceedings are continued by indictment.

THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921, provides that a tribunal to which the Act applies shall have all such powers, rights, and privileges as are vested in the High Court; or, in Scotland, the Court of Sessions, on the occasion of an action in respect of the following matters—

(1) The enforcing of the attendance of witnesses and examining them on oath, affirmation, or otherwise;

(2) The compelling the production of documents;

(3) Subject to rules of court, the issuing of a commission or request to examine witnesses abroad.

Any person refusing to obey a tribunal armed with these powers is reported to the High Court, and dealt with as a person guilty of contempt of court.

THE JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) ACT, 1926, prohibits the publication of indecent matter in relation to any judicial proceedings, and in the case of matrimonial causes it strictly limits and defines the particulars that may be published.

THE INDICTMENT is no part of the trial, but an information or declaration for the King.

The verdict of a coroner's jury charging murder or manslaughter has the same effect as an indictment.

In Scotland prosecution by indictment is used only by the Crown, *i.e.*, in a Public Prosecution. A private individual prosecutes by criminal letters. The Form of Indictment in Scotland was shortened and amended by the 1887 Act and is now a direct charge. It is signed by the Lord Advocate or, in Sheriff Court cases, by the Procurator Fiscal, with the prefix "By Authority of H.M. Advocate." The accused, witnesses, and jurors are now all cited on the one warrant to two diets: First, The Pleading Diet; Second, The Trial Diet. The First Diet takes place at least six days after the service of the warrant at the Sheriff Court mentioned on the warrant.

The Second Diet may be the High Court or the Sheriff Court of *Locus Delicti* (place of the crime).

BAIL is the taking by the examining justices of the recognisances of the accused and of his sureties. The condition of such recognisance is that the accused will appear at the time and place of trial and that he will then surrender and take his trial and not depart the Court without leave. (Indictable Offences Act, 1848, Section 23.)

THE PLACE OF TRIAL. In criminal matters the place of trial is fairly rigidly determined by the county in which the crime is alleged to have been committed. Exceptions—

(1) The venue may be laid in any county for (*a*) extortion; (*b*) resisting or obstructing officers of the Excise; (*c*) offences

under the Customs Acts ; (*d*) endeavouring to seduce soldiers and sailors from their duty or inciting them to mutiny.

(2) The venue may be laid in the county where the offence was committed or where the offender is apprehended, or is in custody, in cases of bigamy, forgery, larceny, or embezzlement by persons in the public service, and Post Office offences.

(3) The venue may be laid either where the offence was committed or in any adjoining county in the case of plundering a wrecked ship. In certain cases, however, where it is considered likely that an unprejudiced jury may be difficult to obtain, the trial may be held at the Central Criminal Court.

The Criminal Justice Act, 1925, provides that a person charged with an indictable offence may be proceeded against, indicted, tried and punished in any county or place in which he was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons issued charging the offence, as if the offence had been committed in that county or place.

Procedure in Criminal Cases

A criminal proceeding may be instituted without bringing it before the magistrate at all. This may be done either by indictment or by criminal information (two kinds, see page 166) or by Coroner's Inquisition. Of these three proceedings that by indictment is the most common

In Scotland, the accused is brought before the nearest magistrate and may emit a declaration. (Optional since 1908 Act.)

He is formally remitted to the Sheriff, who must inform him that he is entitled to have legal advice, for which 48 hours are allowed. He may send for a Law Agent and interview him privately.

In this country the prisoner, upon being arraigned, may—

(1) Move to quash indictment.
(2) Stand mute.
(3) Confess.
(4) Plead " not guilty."

If the prisoner does not confess, the Jury is then empanelled and may be challenged by the prisoner. The prisoner is then formally charged.

In Scotland, the charge is read over to the accused and, if necessary, explained to him. He is asked for an explanation, but is warned that all he says may be used in evidence against him, and that he need not say anything.

This is followed by Trial and Issue, viz.—

1. *Opening Speech by Counsel,* or the party explaining what is case is and what witnesses he proposes to call. In criminal

cases, when the jury has been sworn, counsel for the Crown or prosecution opens the indictment and calls witnesses, who are sworn.

2. *Examination-in-Chief of Witnesses,* by means of questions by counsel who calls him. Leading questions are not generally allowed. Practically everybody, notably the accused, may be a witness, and anybody but the accused may be compelled to be a witness, save that a husband and wife shall not be called against each other, except in certain specified cases.

The ideal of the law is that testimony should fulfil the following conditions—

(1) It must be relevant to the issue.
(2) It must be produced in such a form that it can be cross-examined.
(3) It must not be of a worse kind so long as a better is available.
(4) It must not be involved or waste the time of the Court.
(5) It must not be based on hearsay. The following are admissible under appropriate conditions—

(*a*) Admissions, and statements made in the presence of a party, and confessions.
(*b*) Statements made by persons since deceased, if they are unlikely to be false.
(*c*) Statements contained in public documents.

3. *Cross-examination of witness* by opposing counsel.
4. *Re-examination by own Counsel.* No new matter to be mentioned.

The one side having produced its evidence, its case is closed. The Court may now take the opportunity of deciding that there is nothing to go to the jury, or, if the question is purely one of law and the Court has a distinct opinion against the contention made, it may officially declare that there is no case, without calling on the other side.

5. *The Defence.* Procedure is as described in paragraphs 1 to 4 above. Counsel is allowed a closing speech for the defence; followed by a closing speech for the prosecution. If the defence calls no witnesses, or only the accused enters the witness box, then the speech of counsel for the defence is the final speech.

The Poor Prisoners' Defence Act, 1930. Its object is to bring up to date the Act of 1903. It provides for the granting of a defence certificate in respect of any person committed for trial for an indictable offence. The certificate, which entitles him to free legal aid, may be granted by the committing justices or by the judge or chairman of the court before which he is tried.

The Costs in Criminal Cases Act, 1908, also provides that the cost of prosecution or defence may, by order of the Court, be paid out of the County or County Borough Fund.

6. *Summing up* by the Judge. The exposition in orderly sequence by a master mind of the involved relations between the different actors, calling attention to the material parts of the evidence. The Judge directs the jury as to the law governing the facts, and points out to them the issues in the case; rehearses the facts as brought out by the evidence; and comments for their direction on the strength and weakness of the evidence that they have heard.

7. *The Verdict* of the jurors in criminal cases must be unanimous. In criminal cases the Clerk of Arraigns asks the jury: "Are you all agreed upon your verdict?" If the answer is in the affirmative, he then says: "Look upon the prisoner at the bar, and say whether he is guilty or not guilty." The foreman then replies either "Guilty," or "Not guilty."

In Scotland, the verdict is taken by a majority. The jury may pronounce the verdict at once or may retire to discuss the case. The foreman gives the verdict in open Court, which may be "guilty," "not guilty," or "not proven." When the verdict is "guilty," sentence is not pronounced till the prosecutor moves for sentence. If he does not move for sentence, the prisoner is acquitted.

8. *Sentence.*

9. *Reprieve or Pardon.*

10. *Execution of sentence.*

THE COURT OF CRIMINAL APPEAL ACT, 1907. Until the passing of the Criminal Appeal Act of 1907, no further appeal in Criminal Law was allowed except upon points of law, which might be referred to the Court of Crown Cases Reserved. The Court of Criminal Appeal consists of the Lord Chief Justice and the Judges of the King's Bench Division of the High Court, of whom an uneven number of not less than three must sit. No dissents are allowed other than in exceptional cases.

A person convicted on indictment may appeal to the Court of Criminal Appeal—

1. Against his conviction on any grounds of appeal which involve a question of law only; and

2. With leave of the Court of Appeal, or upon the certificate of the Judge who tried him, that it is a fit case for appeal against his conviction—

(*a*) On any ground of appeal which involves—

(i) A question of fact alone,

(ii) A question of mixed law and fact; or

(*b*) Any other ground which appears to the Court to be a sufficient ground of appeal.

3. With the leave of the Court of Criminal Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law.

The Court may (i) reverse, (ii) reduce, or (iii) increase the sentence.

The decision of the Court is final, except when, at the instance of the Director of Public Prosecutions or the prosecutor or the defendant, the Attorney-General certifies that the decision of the Court involves a point of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, in which case there may be an appeal to the House of Lords.

In Scotland there was no Court of Criminal Appeal until the passing of the Criminal Appeal (Scotland) Act, 1926.

THE PLACE OF TRIAL. In civil cases the suer may select the place, but his choice is practically limited to the nearest Assize town or London, subject to the control of an official who will see that the sued is not put to an unfair disadvantage, and will, if necessary, fix the place himself.

In County Courts the action must be brought in the district in which the sued dwells or carries on business.

THE JUDGE. The Judge controls the conduct of counsel throughout the trial. Counsel are compelled to confine themselves to relevant and proper questions, and the Judge may require them to explain why certain questions are put to a witness. The Judge may, on his own initiative, call and examine witnesses, and may put questions to the witnesses whom counsel has called. If the Judge is of the opinion that upon the evidence presented the jury should not convict, he may stop the case and direct the jury to return a verdict of " not guilty."

Procedure in Civil Cases

THE PROCEDURE IN COURT follows much the same form as in a criminal trial, as described previously in this Chapter

(*a*) JURISDICTION: Proceedings are commenced by—
- (i) Originating summons; or
- (ii) Writ of summons.

(*b*) THE WRIT: contains—
- (i) Parties on the writ.
- (ii) Claims on the writ.
- (iii) The indorsement of the writ.
- (iv) The issue of the writ.
- (v) Service of the writ.

(*c*) PROCEEDINGS AFTER THE SERVICE OF THE WRIT.

(i) Appearance.
(ii) Proceedings by plaintiff in default of appearance.
(iii) Proceedings if appearance is entered—
(*a*) Under specially indorsed writ.
(*b*) Under generally indorsed writ.
(1) Master gives directions.
(2) Summons for directions.

(*d*) PLEADINGS

(i) Consent of master required before delivery with certain exceptions.
(ii) Consist of written or printed statements of the facts.
(iii) Must contain all material facts on which the party relies.

(*e*) STATEMENT OF CLAIM.

Contents must set out all the material facts on which the plaintiff relies as giving him a cause of action.

(*f*) DEFENCE.

The defendant may—

(i) Traverse.
(ii) Confess and avoid.
(iii) Object in point of law.

(*g*) SET-OFF AND COUNTER CLAIM

(*h*) REPLY.

(*i*) AMENDMENT OF PLEADINGS.

(*j*) DISCOVERY AND INSPECTION.

(i) Interrogatories.
(ii) Discovery of documents.
(*a*) General discovery.
(*b*) Special discovery.
(iii) When discovery will be refused.
(iv) Inspection of documents.
(v) Notice to—
(*a*) Produce.
(*b*) Admit.

(*k*) INTERLOCUTORY APPLICATIONS.

(i) Summons for particulars.
(ii) Application to set aside writ.
(iii) Interpleader summons.
(iv) Application to strike out pleadings.
(v) Application for security for costs.
(vi) Application for remission to County Court.
(vii) Third party procedure.

(*l*) NOTICE OF TRIAL.

(*m*) DISCONTINUANCE OF ACTION.

(*n*) APPEAL.

(*o*) EXECUTION.

1. *The Verdict.* In civil cases the jurors must be unanimous, unless the parties agree to accept the finding of a majority when it has been found that they cannot agree.

2. *Judgment.* No form is prescribed in which judgments must be delivered, and it may often be a matter of doubt how far a decision turns on the view which the Judge took of the facts, and how far on a rule of law which he considered applicable.

A Judge is not bound to receive the verdict of a jury, and in civil cases it is expressly provided that he shall direct judgment as he thinks right. The grounds of judicial decisions are—

(1) The application of existing rules.
(2) The interpretation of existing rules.
(3) "The reason of the thing."
(4) Precedents.

The judgments of the Court are given in the following manner—

(1) Divisional Court: Each Judge separately.
(2) Court of Appeal: Each Judge separately.
(3) Court of Criminal Appeal: One judgment is pronounced, except in cases where, in the opinion of the Court, the question is one of law upon which it would be convenient that separate judgments should be pronounced by the members of the Court.
(4) The House of Lords: Each Judge gives his opinion and a vote is taken, the majority carrying the verdict. When a decision is given it is a judgment of the whole House.
(5) Judicial Committee of the Privy Council: Judgment is pronounced by one member.

DAMAGES. The general rule is that the amount is a matter peculiarly within the province of the jury, so much so that, except by consent, a Judge never decides the figure unless it is fixed by law.

Exemplary damages are given when the award not only repays the suer for what he has lost, but makes an example of the sued by an additional mulct, as one punished for moral misconduct, *e.g.*, breach of promise of marriage, assault, trespass, seduction, libel, slander, false imprisonment, malicious prosecution.

COSTS. In 1842 an Act provided that costs should be taxed by a new official styled the Taxing Master, to be appointed from among solicitors of twelve years' standing. In criminal prosecutions the costs are taxed by the Clerk of the Court, who does so in

accordance with the scale made by the Home Office under the Costs in Criminal Cases Act, 1905.

COMMITTEE ON DISPATCH OF BUSINESS AT COMMON LAW. The Lord Chancellor, in December, 1932, appointed a committee under the chairmanship of the Master of the Rolls to "consider the state of business in the Supreme Court, and to report whether greater expedition in the dispatch of business, or greater economy in the administration of justice in the Court, is practicable, and would be effected by any, and, if so, what rearrangements in the constitution of the Supreme Court and of the divisions comprised in the High Court of Justice And by any alteration in the days of sittings and the vacations of the Supreme Court, and by the elimination or restriction of the right of appeal to, within, or from that Court."

"And to consider the present arrangements for the dispatch and the administration of business at the Central Criminal Court and on circuit, and to report whether greater economy and efficiency could be attained by any revision of the Orders in Council relating to the towns at which business is to be done on circuit, or by any alteration in the administration of business or of the Grand Jury system, due regard being had to the maintenance of the present circuit system on its main lines by the periodical visits of His Majesty's judges to those parts of the country where business suitable for consideration by them arises."

The Committee reported, and as a result the Administration of Justice Act, 1933, was passed, which provided, *inter alia*, for the abolition of Grand Juries. (*See* page 175, also Second, Third and Final Reports.)

Juries

GRAND JURIES. The system is descended from the ordinance of Ethelred dated 978, which provided that twelve senior "thugs" were to go with the Reeve and present any person suspected of crime. The first statute of the realm in which there was to be found any reference to Grand Juries' duties was that promulgated by Henry II in 1164, when he held court in Clarendon Park, outside Salisbury. Both Quarter Sessions and the Assizes had Grand Juries. They were a local body of notables to whom anybody could denounce anyone else. They generally consisted of twenty-three or twenty-four persons selected by the Sheriff; twelve at least must find a bill. It was not a fixed body, and was usually composed of "persons of the best figure in the county." Each Grand Jury was, relatively to its petty jury, of a better worldly standing. The whole work of the Grand Jury was to consider charges in private, no judge being present, and it was their duty

to say whether they would indict. They heard the evidence against the accused as given on oath before the magistrates, and decided whether or not there was a case for him to answer. If they decided on *prima facie* evidence that there was no case against the prisoner, they were said to "throw out the bill." This, however, was not an acquittal, for he might be again indicted. It only meant that they refused to accuse him. The Grand Jury was the jury of accusation.

The Grand Juries were abolished as from 1st September, 1933, by the Administration of Justice Act, 1933, on the recommendation of the Committee on Procedure referred to above presided over by the Master of the Rolls. The last Grand Jury sat at Hereford Quarter Sessions on 25th August, 1933.

PETTY JURIES are the juries empanelled to try the guilt or innocence of a prisoner. They are twelve in number. All citizens are liable to serve whose names appear on the Jury List. Exemptions include peers, members of Parliament, judges, barristers, clergy, doctors, chemists, officers of Army, Navy, and Air Force, also members of the London County Council from service on juries in the County of London.

The Administration of Justice Act, 1925, provides that rules of court may provide for prescribing cases where juries are or are not requisite.

COMMON JURIES The Common Jury is empanelled to try civil actions It consists of twelve persons who own freehold property to the value of £10 a year, or are leaseholders for a term of at least twenty-one years of land of the value of £20 a year, or occupy a house rated at not less than £20, or, in Middlesex, £30 The Sex Disqualification (Removal) Act 1919, enables women as well as men to be empanelled on a jury.

SPECIAL JURIES were originally introduced in trials at bar where the causes were of too great nicety for the discussion of ordinary freeholders, or when the Sheriff was suspected of partiality.

The Juries Act, 1870, Section 2, provides that every man whose name shall be in the jurors book for a county in England or Wales or for the county of the City of London, and who shall be

(1) legally entitled to be called an esquire, or
(2) a person of higher degree, or
(3) a banker or merchant, or
(4) shall occupy a private dwelling-house rated or assessed to the poor rate or to the inhabited house duty—

(*a*) on a value of not less than one hundred pounds in a town

containing, according to the census next preceding the preparation of the jury list, 20,000 inhabitants and upwards, or rated or assessed to the poor rate, or

(*b*) not less than fifty pounds elsewhere, or

(5) shall occupy premises other than a farm rated or assessed as aforesaid on a value of not less than £100; or

(6) shall occupy a farm rated or assessed as aforesaid on a value of not less than £300;

shall be qualified and liable to serve on Special Juries in every such county in England and Wales and in London respectively.

Special Juries may be claimed by either party to a suit who prefers that the case should be heard by persons of his own social standing.

THE JUDGES, except the unpaid Justices of the Peace, are trained lawyers of great experience, and to them belongs the determination of all points of law that may arise in the course of a trial. The jurors are ordinary citizens whose function is to determine disputed questions of fact.

THE CIRCUIT TOWNS COMMITTEE appointed by the Lord Chancellor in April, 1936, reported in August, 1936, and recommended the re-distribution of Assize facilities

CHAPTER XXVII

CRIMINAL LAW

DEFINITION OF CRIME. A crime is a breach of duty imposed by law for the benefit of the community. "A crime is a wrong whose sanction is punitive and is remissible only by the Crown if remissible at all." (*Kenny*) "A crime is an act or omission forbidden by law under pain of punishment." (*Mann* v. *Owen*, 1829, 9 B. & C. 599-602.) "Crimes are those wrongful acts which the State punishes in the interests of the community at large." (*Odgers.*) Our Criminal Law is almost entirely Common Law with large statutory additions.

Crime may be caused by (*a*) wrong environment, (*b*) mental defect, (*c*) moral defect, (*d*) physical defect, (*e*) ignorance, (*f*) conflict between State law and personal conscience. Punishment is not only meant to be a deterrent to the criminal but also a warning to others of the community that the appropriate penalty will follow upon the commission of crime. The duty of every citizen is to prevent crime and to detain the criminal, and a person may be punished for not doing so. In general, the law punishes only acts and not omissions Ignorance that an act is criminal is no defence.

The control of the criminal jurisdiction rests with the Court of King's Bench in the High Court of Justice. In inferior Courts, Judges decide both law and facts, but in the higher Courts there are juries.

CLASSIFICATION OF CRIMES AND OFFENCES. Criminal offences may be broadly divided into two main classes: (1) indictable offences, and (2) offences punishable on summary conviction before magistrates.

INDICTABLE CRIMES. At the head of indictable crimes is the offence of treason, which stands in a class by itself.

THE TREASON ACT, 1351, defines the offence of high treason to consist in a breach of the allegiance which every subject owes to the Crown. Treason is now a purely statutory offence.

The crime of "Petit Treason" having been abolished, some writers no longer use the term "High Treason." Treason (*proditio*) denotes a betraying, treachery, or breach of faith against the Sovereign.

MARTIAL LAW possesses two meanings—

(1) The common law right of the Crown and its servants,

together with all citizens, not only to repel force by force, but to do all such acts as fall within their common law duty in order to restore peace or suppress insurrection, riot, or rebellion.

(2) That state of things which exists when, by virtue of the prerogative, the military authorities, in time of war, insurrection, riot, or rebellion, claim the cognizance of certain offences by means of military tribunals to the exclusion of the civil courts.

(*a*) The Crown's prerogative to declare martial law does not exist in time of peace (*R.* v. *Eyre*).

(*b*) Its exercise is limited by and ceases with the necessity which gave rise to it (*Wolfe Tone's* case).

(*c*) Where a state of war exists, and is recognized by the Courts, the Courts have no jurisdiction over the military authorities (*Ex parte D. F. Marais*).

Felonies and Misdemeanours.

Other indictable offences are divided into felonies and misdemeanours.

These are classified according to the returns which are required to be furnished annually to the Home Secretary, as follows—

1. Offences against the person.
2. Offences against property with violence.
3. Offences against property without violence.
4. Malicious injuries to property.
5. Forgery and offences against the currency.
6. Other offences not included in the above classes.

These classes are again sub-divided.

The Right of Public Meeting. People may meet together when and where they please so long as they do not—

(1) Commit a nuisance.

(2) Commit a trespass.

(3) Constitute an unlawful assembly, which may consist of three or more persons who—

(*a*) Assemble to commit, or when assembled do commit a breach of the peace.

(*b*) Assemble to commit a crime.

(*c*) Assemble for any purpose in such a manner as to cause reasonable persons to fear a breach of the peace.

(4) Rights of the Crown in dealing with an unlawful assembly—

(i) To prosecute every participant for misdemeanour.

(ii) To disperse it, if necessary by force.

(iii) To deal with a riotous assembly under the provisions of the Riot Act, 1715.

(iv) To call for sureties for good behaviour.

(v) To call upon a lawful assembly to disperse, if the peace can be restored by no other means.

(vi) To proclaim the meeting beforehand in order to warn citizens that they attend at their own risk.

Justice of the Peace

The preservation of peace is particularly assigned to a certain class of the community—the Justices of the Peace. These persons are placed upon the Commission, charging them " to keep and cause to be kept the King's Peace." To attain these ends they are assisted by a Police Force, which is the instrument by which conformity to the law and customs of the community is secured.

QUALIFICATIONS Certain persons are *ex-officio* Justices of the Peace: (*a*) nationally, the Lord Chancellor, Lord President of the Privy Council, Lord Privy Seal, all Judges of the Supreme Court, the Attorney-General, and the Solicitor-General; (*b*) locally, Chairmen of County Councils, Urban and Rural District Councils, Mayors, ex-Mayors of Boroughs for one year only, Recorders, Coroners, and County Court Judges. The Mayor of a Metropolitan Borough is *ex-officio* a Justice of the Peace during his year of office, but ex-Mayors of those Boroughs are not *ex-officio* Justices of the Peace. Since the Sex Disqualification (Removal) Act, 1919, women as well as men are qualified. Justices must reside within seven miles of area of jurisdiction.

The majority of the Justices are, however, placed upon the Commission of the Peace on the recommendation of the Lord-Lieutenant of the County to the Lord Chancellor. In the county of Lancashire the Chancellor of the Duchy of Lancaster appoints To ensure suitable persons being recommended, since 1905 Advisory Committees have been set up, who advise the Lord-Lieutenant in his recommendations.

In March, 1934, the Attorney-General in reply to an inquiry in the House of Commons what considerations as to suitability and qualifications were taken into account when making appointments of justices of the peace, replied that the Lord Chancellor relied upon the local advisory committees to recommend to him persons of moral and good character, general ability, business habits, independent judgment, and common sense.

Stipendiary Magistrates are appointed in some large boroughs and urban districts. They are barristers of not less than seven years standing, appointed by the Crown on the recommendation of the Home Secretary.

Justices of the Peace may sit singly as a Petty Sessions or two or more as a Court of Summary Jurisdiction or as a Court of Quarter Sessions.

PETTY SESSIONS comprises one or more magistrate.

One magistrate has power to impose—

(1) Imprisonment up to fourteen days.

(2) Fines up to 20s.

In a more serious case the prisoner is committed to stand his trial at either the Assizes or the Quarter Sessions. The nature of the charge, also whether the Assizes or the Quarter Sessions will be held next, help to decide to which Court it shall go.

Every offence cited by Parliament in modern times has a definite maximum penalty (and, in some cases, a minimum penalty) named in the Act. This maximum varies according to the gravity of the offences. For instance, breaches of local bye-laws are usually punishable by a maximum penalty of 40s., whereas supplying impure food may be punished by a penalty of £20.

COURT OF SUMMARY JURISDICTION consists of two Justices of the Peace, and is equivalent to one Stipendiary Magistrate. The procedure is as follows The prosecution starts the case. The defendant has the right to be tried by his peers—generally speaking—if the offence with which he is charged is punishable by imprisonment for a term exceeding three months. (Summary Jurisdiction Act, 1875, 17 (1).) In a large number of minor offences there is no right to trial by jury, although there is, of course, a right of appeal against every conviction. (*See* Criminal Justice Administration Act, 1914, S 37) Defendant may elect to be dealt with under the Summary Jurisdiction Acts. A defendant may be represented by a solicitor, but at Quarter Sessions and Assizes normally by a Barrister only. Under the Rating and Valuation Act, 1925, a solicitor may appear at Quarter Sessions in rating appeals under £100 rateable value.

The powers of two magistrates or one stipendiary include—

(1) Imprisonment with or without hard labour up to six months, but in a few cases, *e.g.*, offences under the Prevention of Crimes Act, 1871, up to twelve months. In Scotland, the Sheriff may pass sentence up to two years' imprisonment or remit the accused to the High Court.

(2) Fines up to £50, but in a few cases, *e.g.*, under the Defence of the Realm Acts, £100 ; Aliens Restriction Act, 1914, £100 ; Gaming Houses Act, 1854, £500.

The Departmental Committee on the Social Services in Courts of Summary Jurisdiction issued its Report in March, 1936. It recommends the general adoption of the practice of hearing matrimonial cases at Special Sessions and the simplification of Probation procedure. The Report is in four parts : (i) Matrimonial Jurisdiction of Justices ; (ii) The Law and Practice of Probation ; (iii) Other Social Services of the Courts ; and (iv) Organization.

QUARTER SESSIONS A meeting of at least two Justices of the Peace for the County, except in the case where there is a borough possessing a separate Court of Quarter Sessions. In the latter case the Recorder, who is a barrister of not less than five years' standing, appointed by the Crown on the recommendation of the Home Secretary, is the sole judge. A County Court of Quarter Sessions is presided over by a Chairman elected from amongst the Justices.

Jurisdiction is (1) Criminal, (2) Appellate, or (3) Ministerial.

(1) *Criminal.* Original Jurisdiction. It can try all indictable offences, except the following: All capital crimes and the more serious misdemeanours, viz., bribery, libel, etc. The Criminal Justice Act, 1925, extended the jurisdiction to include certain offences under the Perjury Act, 1911, the Forgery Act, 1913, and other Acts.

The mode of procedure at Quarter Sessions is similar to that of the Assize.

(2) *Appellate.* (*a*) Appeals from Courts of Summary Jurisdiction. The Summary Jurisdiction (Appeals) Act, 1933, amends the law relating to appeals from Courts of Summary Jurisdiction. Power is given to the Court of Quarter Sessions to increase a sentence on appeal. (*b*) Appeals in rating, licensing, Poor Law, bastardy, etc., cases. All licensing appeals, even from boroughs, go to County and not Borough Quarter Sessions, except in county boroughs having a separate Court of Quarter Sessions, and then to the whole body of Justices.

(3) *Ministerial, e.g.,* enrolment of certificates relating to the diversion or stopping of highways, granting of licences to keep private mental hospitals, etc.

In the City of London itself there are no Quarter Sessions, but the Central Criminal Court takes the place of Quarter Sessions and Assizes.

Appeal from Quarter Sessions only if—

(1) Statutory right.
(2) " Not guilty " plea.
(3) Case stated.

Court of Assize

Presided over by a Judge of the Supreme Court, generally a member of the King's Bench Division, as described in Chapter XXV.

In Scotland, the High Court is presided over by a Lord Ordinary. The equivalent Court in Scotland is the Circuit Court of the High Court of Justiciary.

CIRCUITS. The circuit system has long been the subject of controversy, for Judges are periodically taken from London,

where there are always arrears of civil business, to Assize towns, where, very often, there is very little of any sort. The business of the Assize is chiefly criminal. When a Judge is unable to go on circuit, a King's Counsellor is appointed Special Commissioner to sit at the Assizes.

There are eight circuits: (1) Northern, (2) North-Eastern, (3) Midland, (4) South-Eastern, (5) Oxford, (6) Western, (7) North Wales and Chester, (8) South Wales.

At the principal towns in the counties comprised within these circuits the Assizes are held at least twice a year, in winter and summer. They have no appellate jurisdiction while on circuit.

The Administration of Justice Act, 1925, gives the Lord Chief Justice power to order that on the occasion of a particular circuit no assizes shall be held at any specified place on that occasion.

CENTRAL CRIMINAL COURT. In Greater London the place of the Assizes is taken as regards the greater part of the area by the Central Criminal Court. The Court House was provided and is maintained by the City of London Corporation, which also pays the salaries of the judges other than judges of the High Court. The London County Council pays seven-eighths of certain establishment expenses of the Court, the remainder being paid proportionately by the Councils of the other counties within or partly within the Central Criminal Court District.

COMMISSIONS. The Judges at Assizes act under various commissions and statutes for both civil and criminal business.

There are three commissions which empower the Judges of Assize or any other person usually named in the commission to administer justice on circuit—

1. *The Commission of Oyer and Terminer.* A commission addressed to certain Judges and others directing them to inquire concerning certain crimes committed in certain counties and extending to all offenders indicted at the Assizes. These commissions are either special or general. They are general when the persons named in the commission are directed to try all cases occurring within certain places. They are special if they are limited to the trial of particular offences.

2. *The Commission of Gaol Delivery.* Authorizes the trial of all prisoners in gaol at the time of the Assizes.

3. *Nisi Prius.* To decide all matters of a civil nature, " unless before " the Justice of Assize comes into the county they have been taken to the High Court for trial.

ARBITRARY IMPRISONMENT is prevented by—

(*a*) Magna Charta, 1215.

(*b*) The Case of the Five Knights (Darnell's Case), 1627.

(*c*) The Petition of Right, 1628. Referring to the Case of the Five Knights cites Magna Charta, Sect. 39, as its authority for declaring arbitrary imprisonment to be illegal.

(*d*) The Habeas Corpus Act, 1679. An Act for the better securing the liberty of the subject, and for the prevention of imprisonments beyond the seas. (*See* page 190.)

ARRANGEMENT OF THE COURT. It is usual in the Crown Court for the High Sheriff, with his Chaplain and the Under-Sheriff, to be seated on the Bench on one side of the Judge, and for the Judge's Marshal and the Judge's Clerk to sit on the Bench on the other side of the Judge. On the seat below the Judge's Bench sits the Clerk of Arraigns (or whoever performs his duties—sometimes the Clerk of Assize) in the Crown Court and the Associate in the Civil Court.

THE JUDGE'S MARSHAL accompanies the Judge on Circuit. He is usually a young barrister. He has certain social duties to perform and may be required by the Judge to invite certain guests to either luncheon or dinner.

The CLERK OF ASSIZE. The Clerk of Assize makes all the necessary arrangements for the opening of the Commission of Assize at the respective towns visited by the Judges of the High Court when on circuit. Upon him devolves the duty of arranging, subject to the consent of the Court, the order in which the trials are to proceed. All indictments settled by counsel have to be forwarded to him, engrossed and abstracted, together with all depositions, inquisitions, and recognizances.

The CALENDAR. The Calendar of the Assize is a list of persons who have either to be present under the Commission of Gaol Delivery, or to surrender to their bail to answer a charge contained in an indictment. Copies are printed, and one is usually retained by the Judge, the Clerk of Assize, the High Sheriff, and the Governor of the Gaol.

COUNTY OFFICIALS. There are certain county officials whose jurisdiction includes that of Criminal Law. These include the Lord-Lieutenant, the Custos Rotulorum, the High Sheriff, the Under Sheriff, and the Bailiffs.

1. *The Lord-Lieutenant of the County* has been, since William and Mary, Custos Rotulorum, or keeper of the records of the county, and in that capacity has much to do with the preservation of the peace, and with the nominations to the office of Justice of the Peace.

2. *The High Sheriff* is appointed for twelve months by the King. He is the holder of the most ancient office of the county. The office of Shire-Reeve dates from Saxon times, becoming of

considerable importance under the Normans. The names of the prospective sheriffs for the county are approved by the Chancellor of the Exchequer and the Justices of the King's Bench Division. The former presides over the Court in accordance with custom, which decrees that the event shall be held "on the morrow of St. Martin." The ceremony thus forms a link with the now defunct Court of Exchequer Chamber, of which the Chancellor of the Exchequer was the head.

The names are chosen so that a person has three years' warning to make preparations for the office. The High Sheriff is finally selected by the King "pricking" the name of the person whom he desires for the succeeding year. The ceremony of "pricking" is many centuries old. The origin is lost in history, but there are records of "prickings" in the reign of Queen Elizabeth. The person selected is usually the one at the head of the list. In the case of the County Palatine of Lancaster, the High Sheriff is nominated by the Chancellor of the Duchy. The office is compulsory and is unpaid, the only plea for excuse being that of poverty.

The duties of the High Sheriff formerly included the control of the Militia, which were merged into the Reserve Forces under the Territorial and Reserve Forces Act of 1907.

The High Sheriff is now responsible, however, for the preserva tion of the peace and the administration of justice within the county. In this connection, he is required to entertain the Judges of the King's Bench and the Commissioner of Assize when upon circuit in the county, and to uphold the dignity of the law by providing elaborate equipage, etc. The High Sheriff is responsible for summoning the Juries. Certain provincial cities are counties in themselves by ancient custom, *e.g.*, Chester, York, Bristol, Exeter. In such cases, under the Municipal Corporations Act, 1882, they still appoint their own Sheriff on 9th November. He holds office also for twelve months, and in such cities the Sheriff of the County possesses no jurisdiction.

The actual work of the High Sheriff is performed by—

3. *The Under-Sheriff.* This office is usually held by a firm of solicitors, or a member of the firm, who is appointed from year to year. The Under-Sheriff undertakes the work for which the High Sheriff is legally responsible, but this does not prevent his undertaking any private business.

The Orders of the Court are carried out by the—

4. *High Bailiffs and Under-Bailiffs,* but in all this the High Sheriff is legally responsible, *e.g.*,—an extreme case—in the event of it not being possible to secure a hangman to execute a criminal, then the High Sheriff himself will, as a last resort, have to carry out the execution.

OBJECTS OF PUNISHMENT.

(1) To deter the criminal himself from future crime;
(2) To deter others from the commission of offences;
(3) To secure for the public a period of protection from the offenders;
(4) To reform as far as possible the criminals;
(5) To satisfy the demand of the people for punitive justice.

PREVENTIVE DETENTION. The system of preventive detention has now been in operation for over twenty years. The primary object of the system was to secure increased protection for society by enabling the Courts, when dealing with an offender persistently guilty of serious crimes, to pass, in addition to a sentence of penal servitude, a supplementary sentence of not less than five and not more than ten years preventive detention. The Act provides that a sentence of preventive detention may be passed on such offenders as are found to be "habitual criminals," and that a person shall not be found to be an "habitual criminal" unless he has at least three previous convictions of crime.

PROBATION. Great Britain stands first among European countries in point of time in its legislation, the Probation of First Offenders Act having been passed in 1887, and the more effective Probation of Offenders Act, 1907. Penal reform is gradually shifting from the punishment to the reclamation of the offender, and with the social betterment of that part of the community whose circumstances and temptations are often a heavy handicap.

The Criminal Justice Act, 1925, Part I, provides for the appointment of one or more Probation Officers for every probation area, viz., every petty sessional division. Probation committees are established for every petty sessional division and for every combined area so constituted by the Secretary of State.

THE ROYAL COMMISSION ON CAPITAL PUNISHMENT issued a Report which was approved by the casting vote only of the Chairman, the Reverend James Barr.

THE MONEY PAYMENTS (JUSTICES' PROCEDURE) ACT, 1935, gives effect to some of the chief recommendations of the Departmental Committee on Imprisonment for Debt This Committee of which Sir John Fisher Williams was Chairman reported in July, 1934. The Committee confined itself to the orders made by courts of summary jurisdiction. But the recommendations it made within this sphere touch the roots of probably the most usual causes of present injustice. The main problem before the Committee arose from the fact that many debtors fail adequately to represent their case to the courts, and are consequently, when

existing machinery is put into operation, imprisoned for debts when their circumstances may not warrant such summary treatment.

The Committee recommended that no person should go to prison for non-payment of money under an adjudication of a court of summary jurisdiction "unless and until the mind of the court has been specifically directed to the question of imprisonment."

The circumstances of each debtor must be brought directly before the judicial authorities The various detailed recommendations of the Committee are readily understood in the light of this equitable principle, and they should remove possible hardships to debtors without at the same time affecting the safeguards necessary in the interests of creditors.

House of Lords

The Criminal Jurisdiction includes—

(*a*) Impeachment.
(*b*) Trial by Peers.
(*c*) Bill of Attainder.

(*a*) *Impeachment* (*Accusation*). The prosecution of an offender by the House of Commons before the Lords. The Lords try the case and, on demand of the Commons, pass sentence. There has been no impeachment since that of Lord Melville, in 1805.

(*b*) *Trial by Peers.* It was settled in the course of the fifteenth century that peers had a right to be tried by their peers if indicted for treason or felony. The method of trial differs, according as Parliament is or is not in session. If Parliament is in session the trial is before the King in Parliament. Every peer has a right to vote. The question of guilty or not guilty is decided by the majority of votes, the Lords being the judge of law and fact. If Parliament is not in session, the Lord High Steward is appointed and he issues his precept to any twelve or more Lords to appear to try the facts. These Lords are like the ordinary jury. They must all agree upon their verdict. Their relation to the Lord High Steward is that of jury to the Judge. In both cases the indictment is found by the Grand Jury and removed into Parliament by writ of *certiorari*. In 1901 Earl Russell was tried by Parliament for bigamy, and in August, 1935, Lord de Clifford was tried on a charge of manslaughter and other charges which arose out of a motoring crash at Kingston-on-Thames.

As a result of the latter trial, Viscount Sankey, the former Lord Chancellor, introduced a Bill into the House of Lords in April, 1936, to abolish this privilege of peers, and this received the royal assent in July, 1936.

(*c*) *Bill of Attainder.* A legislative Act of the two Houses (introduced and passed like any other Bill, and requiring the royal assent) declaring a person "attainted." A person was said to be attainted when, having been found guilty of treason or felony, he was sentenced to death or outlawry. The last case of a Bill of Attainder being passed was that of Sir John Fenwick, in 1697.

CHAPTER XXVIII

CIVIL JURISDICTION

(a) Common Law

COMMON LAW means general law as contrasted with special law. It is unenacted law. Thus, it is distinguished from local custom. It is the law of the temporal courts as opposed to the Courts Christian. In theory, it is the traditional law which always has been and still is law in so far as it has not been over-ridden by statute or ordinance. (*Maitland*) "The Common Law of England is only common reason or usage." (*Lord Mansfield* (1767) in *Evans* v. *The Chamberlain of London*.)

Common Law may be one of the following—

(*a*) General Customs in application to the kingdom.
(*b*) Particular Customs in certain Districts, *e.g.*, Law Merchant.
(*c*) Particular Laws in certain Courts, *e.g.*, Ecclesiastical.

The Common Law of England does not prevail in Scotland, which has its own separate customary or common law, largely founded upon the Roman law. The Common Law of the Colonies varies with each. British subjects carried their Common Law to inhabited or barbarous countries.

History

The following Courts comprised the Courts of Common Law at the time of the passing of the Judicature Act, 1873, viz.—

1. Common Pleas.
2. King's Bench.
3. Exchequer.
4. Exchequer Chamber.

The Court of King's Bench followed the King and was not a fixed Court like the Court of Common Pleas.

By the Judicature Acts, the Court of King's Bench was created a Division of the High Court of Justice, and in it were merged the ancient Courts of the Exchequer and the Common Pleas, all the Judges of which are now placed upon an equal footing as Judges of the King's Bench Division, and it is presided over by the Lord Chief Justice of England. It has jurisdiction over all criminal causes, from treason to the smallest breach of the peace,

and all indictments in inferior Courts may in special cases be removed by writs of *certiorari*.

On the Common Law side there were originally, in 1873-5, three divisions, known as : (1) King's Bench ; (2) Common Pleas ; (3) Exchequer ; with powers of the old Courts of the same names, together with the Courts of Common Pleas of Lancaster and Court Pleas of Durham, and the London Court of Bankruptcy.

These were consolidated in 1881 under Orders in Council dated 16th December, 1880, and the powers which belonged to the respective divisions were vested in the Lord Chief Justice of the King's Bench Division, who had been given the title of the Lord Chief Justice of England, and the Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, were consolidated with the King's Bench Division.

Jurisdiction of King's Bench Division

On its civil side the King's Bench Division is concerned with actions arising out of the Common Law, cases between subject and subject, and revenue cases. The subjects generally include Contracts, Agency, Partnership, Companies, the Sale of Goods, etc. Bankruptcy business was, by an Order of the Lord Chancellor (Viscount Birkenhead), dated 15th August, 1921, by virtue of Section 97 of the Bankruptcy Act, 1914, on and after 12th October, 1921, assigned to the Chancery Division of the High Court of Justice.

The Commission of Assize authorizes the trial of civil cases pending before the High Court in the outlying counties, Nisi Prius (" unless before ") the case has been heard in London.

It is provided that the Court shall also hear appeals from Petty Sessions and Quarter Sessions, and from the County Courts and Inferior Courts. The jurisdiction formerly exercised by the Court of Crown Cases Reserved was vested in the Judges of the King's Bench Division together with the Lord Chief Justice of England.

The Royal Commission on the Despatch of Business at Common Law appointed in 1934 under the Chairmanship of Lord Peel to inquire into the state of business in the King's Bench Division; whether any alteration should be made in the Divisions of the Supreme Court or in the Judges' circuits; whether work should devolve from the High Courts to the County Courts, and whether a retiring age should be imposed upon future appointments to the Bench of the Supreme Court issued its Report in 1936. The Report concludes that whilst it is generally agreed that the administration of justice has reached a very high level, the organization

of justice falls below that standard It considers that improvements in methods and system are the most pressing need, and makes several recommendations for their introduction. A fixed retiring age of judges is also proposed

Writs

The leading principle of the Norman procedure was undoubtedly the King's Writ. It replaced the ancient summons by the party injured to the accused. The writ was enforced by the Sheriff, backed by all the powers of the Crown. Hence the claim of the King to be recompensed for his trouble and expense in maintaining the necessary officers to enforce his orders. This led to the open sale of writs, which was abolished by Magna Charta. The survival of this can be traced at the present day in the shape of Court fees and stamps.

The following are the writs by which the Court acts—

1. *Certiorari.* An original writ issued either out of Chancery or the King's Bench when the King desires to be certified of any record before any Court of Record or before certain officials, *e.g.*, Sheriffs or Coroners.

2. *Procedendo.* Sometimes after a Writ of *Certiorari* has been given the King's Bench Division are of the opinion that they should not interfere with the normal course of proceedings in the inferior court. A Writ of *Procedendo* may be awarded to restore the proceedings in the inferior court. Once sent back, the proceedings are never removed again before final judgment.

3. *Prohibition* is a writ issuing properly out of the Court of King's Bench, being the King's prerogative writ, directed to the Judge and parties of a suit in any inferior Court, commanding them to cease prosecution thereof.

4. *Mandamus* is a command issued in the King's name from the Court of King's Bench and directed to any person, corporation, or any inferior Court of Judicature within the King's Dominions requiring them to do some particular act therein specified which appertains to their office or duty.

5. *Quo Warranto* is in the nature of a writ of right for the King against persons who claimed or usurped any office, franchise, liberty, or privilege belonging to the Crown, to require by what authority they maintained their claim in order to have the right determined.

6. *Habeas Corpus* has become to be the writ by means of which the liberty of the subject is protected.

Writ of Habeas Corpus

It was preceded by three writs, viz., Dettomine Replegiando, the writ of Mainprize, and the writ De Odio et Atia.

There have been three chief statutes which have extended the efficiency of this writ, viz.—

(1) 16 Ch. I, c. 10. (1640.)
(2) 31 Ch. II, c. 2. (1679.)
(3) 56 Geo. III, c. 100. (1816.)

The form of the writ of Habeas Corpus is as follows—

Etc. (*heading*)
To (*the gaoler*) greeting.

We command you that you have in the King's Bench Division of our High Court of Justice at the Royal Courts of Justice, London, immediately after the receipt of this our writ, the body of *A.B.*, being taken and detained under your custody as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as our said Court shall then and there consider of concerning him in this behalf: and have you there then this our writ

Witness—

There are several writs of Habeas Corpus, viz.—

Habeas corpus ad respondendum, to bring a person to answer a matter in a superior Court, he being in gaol under process of an inferior Court.

Ad satisfaciendum, to bring a person against whom judgment in an inferior Court has been given before a superior Court, in order to proceed with execution against him.

Ad faciendum et recipiendum (or *cum causa*), to remove all proceedings from an inferior to a superior Court when the party has been already arrested.

Ad prosequendum testificandum, to bring a prisoner to trial before the proper jurisdiction, or to bring a prisoner to give evidence.

Ad subjiciendum is the most important writ in the present day It probably existed before Magna Charta.

In 1928 the Judicial Committee of the Privy Council allowed the appeal of a native chief from the decision of the Supreme Court of Nigeria in a case which the Lord Chancellor (Lord Hailsham) described as raising a question of grave constitutional importance to His Majesty's subjects in this country as well as in the overseas Dominions. The question was whether successive applications for a writ of *habeas corpus* could be made to different judges of the same court. It was held that every judge to whom an application was made must hear it on its merits, although some other judge had already refused a similar application (*Eshugbayi*

Eleko v. *Officer Administering the Government of Nigeria* (1928), W.N. 175, 165 L.T. 535).

Divorce at Assizes

By the Administration of Justice Act, 1920, divorce cases are taken at eleven of the Assize towns. At the discretion of authority in London, any divorce action may be heard at one of these places, but generally only undefended cases will be so heard. The inclusion of defended causes in provincial lists may imply special permission from London, but more usually cases brought forward under the Poor Person's Rules. Provincial causes, both defended and undefended, under those rules, will generally be heard at a provincial centre. Local trial does not depend upon application having been made for it. The place of trial is a matter in the hands of authority in London. In an undefended suit the Registrar decides, and he decides also in defended cases, after weighing all the circumstances, the convenience of parties, and the objections, if any, of the respondents or co-respondents (when named) to the venue of trial desired by the petitioner. He must bear in mind also the desirability of choosing London in occasional suits in which intricate legal technicalities may demand the best skill of judges and counsel at the regular Divorce Court.

The Law Merchant

The Law Merchant has reference to commercial transactions. In primitive times it comprised both the maritime and the commercial law of modern times. Both laws differed from the common law and had an international character. They applied both to the domestic trader and to the foreign merchant.

The Commercial Court

The advance in commercial relations with other countries and the increase of internal trade led gradually to a desire to remove the shackles which the jurisdiction of these Courts imposed.

By the end of the seventeenth century the Law Merchant was gradually absorbed into the general legal system of the country, and the jurisdiction was assumed by the ordinary Courts of law and equity. The complete incorporation of the Law Merchant with the common law was not effected till the time of Lord Mansfield, who reduced it to a system. These Courts were finally abolished by the Municipal Corporations Act, 1835, which also abolished the local Admiralty jurisdiction.

The Commercial Court is a part of the King's Bench Division of the High Court of Justice. It was established in 1895 as the result

of a Resolution passed by the Judges of the Queen's Bench Division in the previous year. Originally and for some time after its formation, it was presided over by certain of the Queen's Bench Judges, who were nominated for that work by their brother Judges. To-day any King's Bench Judge is available, though, in practice, there are certain Judges who do most of the work in that Court.

Local Courts of Record

Towns had, in many cases, the right, either by charter or by prescription, to hold various Courts in which the Law Merchant was administered in addition to many other kinds of jurisdiction civil and criminal, *e.g.*—

1. The Lord Mayor's Court in London (the Recorder of London or the Common Sergeant presides)
2. The Tolzey and Pie Poudre Court at Bristol.
3. Liverpool Court of Passage.
4. Derby Court of Record.
5. Exeter Provost Court.
6. Kingston-upon-Hull Court.
7. Newark Court of Record.
8. Northampton Borough Court.
9. Norwich Guildhall Court.
10. Peterborough Court of Common Pleas.
11. Preston Court of Pleas.
12. Romsey Court of Pleas.
13. Salford Court of Record.
14. Worcester City Court of Pleas.
15. Portmote and Pentice Courts for the City and County of Chester.

These Courts have been allowed to continue. In the majority of cases they actually transact business, the provincial Courts being presided over by the Recorder unless there is a local Act to the contrary. In the remaining cases the Court nominally continues to exist as a relic of former power. For example, the Liverpool Court of Passage originated in the thirteenth century. The Lord Mayor for the year is a Judge but does not act in practice. The Presiding Judge must be a barrister of seven years' standing. There is a Registrar, who must be a solicitor. There is no statutory limit to the amount involved in the action which may be brought. It must arise within the city boundaries.

The County Courts

The modern County Court must be carefully distinguished from the County Court of early English history under the

Sheriff. The modern County Court originated in 1846, the chief object being to create Courts for the more easy recovery of small debts.

Acts were passed for the recovery of debts as remote as the reign of William and Mary, which, proving insufficient, were amended six times in the reign of George II ; forty-six times in the reign of George III ; once in the reign of George IV ; and twelve times in the reign of William IV ; yet all proved abortive. The old Courts of Request proved more a source of litigation and oppression than of justice to either plaintiffs or defendants ; and so no less than forty-two legislative changes in the law were made during the first nine years of Queen Victoria's reign, without arriving at that just simplification which the wants of so intricate and vast a commerce as that of these kingdoms imperatively required. At length the efforts of law reformers—the first and most indefatigable being Lord Brougham—were bent upon applying a radical remedy to this irregular and conflicting mass of legislation. Accordingly, the first experimental Act (local in its operation), entitled " An Act for the more Easy Recovery of Small Debts and Demands in England," was passed in the year 1846.

By this Act the Courts of Requests were abolished, and Her Majesty was empowered, with the advice of Her Privy Council, to appoint County Courts in any city, borough, and liberty in England, except the City of London, to divide counties, etc., into districts, and appoint Courts for such districts ; also to appoint as a County Court, or to abolish any Court established for the recovery of small debts, not exceeding £20, under any of the above-mentioned Acts. This was the first wise change in the law of creditor and debtor, and forms the original basis upon which the authority of County Courts is founded at the present time.

Subsequently, the legislature saw fit, by the 13th and 14th Victoria, cap. 61, to amend the last recited Act, and extend the powers and jurisdiction of County Courts to debts not exceeding £50 ; and greater sums when reduced by a set-off to the same amount.

The second experiment in this direction having proved beneficial, the third and most important enactment was passed, entitled the " County Courts Amendment Act, 1856." The power of the County Court Judges was, by the last-mentioned Act, extended to all causes that may be brought before any of the superior Courts, if plaintiff and defendant shall agree by a memorandum, signed by them or their authorized attorneys, that any one of the County Courts to be named in such memorandum shall have power to try any such cause.

County Courts were also given jurisdiction in the recovery of rent, in regaining possession of small tenements, in actions of replevin, etc., under this Act, and the Landlord and Tenant Act; and power was given, under the 18th and 19th Victoria, cap. 63, sec. 40, 41, and 42, of settling the disputes of friendly benefit societies, where the rules of a society do not prescribe any settlement.

The Courts succeeded so well that successive Acts have added increasing powers. These Acts were consolidated by the County Courts Acts, 1888.

The County Court Act, 1934, is a consolidating enactment on the subject of County Courts

The County Courts Acts, 1888, 1903, 1919, and the County Courts (Amendment) Act, 1934, are repealed *in toto*, while the County Courts Act, 1924, is repealed in part. Other statutes are also affected.

Power is given to the County Court Judge to refer actions or any question arising in an action for decision by the Registrar or a referee. In the cases given the reference may be ordered even though the parties do not consent.

Under another provision of the Act anyone who delivers to another person a paper falsely purporting to be a copy of a summons or other process of a county court, knowing it to be false, runs the risk of seven years' penal servitude

England and Wales are marked out into about 500 County Court districts. The Court for the County is held at short intervals in one or more places within each of these districts. Several districts are grouped into one circuit, a Judge presiding over each circuit. In the Liverpool circuit there are two Judges. The districts may be altered by an Order in Council.

JURISDICTION is limited (*a*) geographically, and (*b*) the sum of money at stake must not exceed a certain sum. The County Courts have jurisdiction in the following cases—

1. Actions founded on contract or tort in which the amount claimed by the plaintiff does not exceed £100; the jurisdiction is concurrent with that of the High Court.
2. In actions relating to real property the annual value or rent of which does not exceed £20 per annum.
3. Action such as may be brought in the Chancery Court—

(*a*) Equity of jurisdiction, provided the property in dispute does not exceed £500 in value.

(*b*) In ejectments or any question as to the title to real property if the annual value does not exceed £100.

(*c*) Probate jurisdiction if the estate in question does not exceed £200 personalty and £300 realty.

4. Admiralty actions. This jurisdiction is limited to subjects over which jurisdiction was possessed by the High Court of Admiralty at the time when the first of these Acts was passed, except as regards the last branch of it. The jurisdiction includes—

(*a*) Salvage, where the value of the salved property does not exceed £1,000 or the claim for reward £300.

(*b*) Towage, necessaries or wages, where claim does not exceed £150.

(*c*) Damages to cargo, or by collision, up to £300, or for sums above these limits by agreement between the parties.

(*d*) Arising out of breaches of charter parties or other contracts for carriage of goods in foreign ships or ports where the claim in respect thereof does not exceed £300.

5. Actions in bankruptcy and replevin to any amount.

6. Company winding-up, when the paid-up capital does not exceed £10,000.

7. Miscellaneous actions, including exclusive jurisdiction in—

(*a*) Actions by workmen for injuries, under the Employers' Liability Act, 1880, and Workmen's Compensation Act, 1925, and its amendments.

(*b*) Actions by farmers for improvements, under the Agricultural Holdings Acts.

(*c*) Actions in which the Judge acts as arbitrator—

(i) Guardianship of Infants Act, 1886.
(ii) Coal Mines Regulation Act, 1875.
(iii) Open Spaces Acts, 1875 and 1906.
(iv) Settled Land Acts, 1925.
(v) Titles Act, 1891.
(vi) Friendly Societies Act, 1896.
(vii) Industrial Assurance Act, 1879.
(viii) Debtors Act, 1869.
(ix) Habitual Drunkards Act, 1879.
(x) Law of Distress Amendment Act, 1856.
(xi) Licensing Acts, 1910 and 1921.
(xii) The Mercantile Law Amendment Act, 1856.
(xiii) The recovery of penalties for bribery at municipal elections.
(xiv) Increase of Rent and Mortgage Interest (Restrictions) Acts.
(xv) Landlord and Tenant Act, 1927.
(xvi) Housing Act, 1930.

From the above must, generally speaking, be exempted all actions in which the validity of any devise, bequest, or limitation

in a will or settlement is disputed, and all actions for malicious prosecutions, libel, slander, seduction, breach of promise of marriage or divorce.

By consent in writing of both parties any proceedings that have been properly commenced in the High Court, may be brought in a County Court (Act 1934.) If the plaintiff in a superior Court recovers no more than £20 in an action of tort he can only get costs on the County Court scale except by special favour of the Court. In an action for breach of contract in a superior Court, if the claim be not for more than £100, either party may apply to have the action transferred to the County Court.

PROCEDURE. Plaintiff begins by entering a plaint in a book kept by the Registrar. The officer of the Court then serves a summons upon the defendant. Pleadings are not in use. Evidence is taken. Solicitors as well as barristers may address the Court.

A jury may be summoned when the amount claimed exceeds £5 at the requisition of either party, and in other cases at the discretion of the Judge, on application of either party. The jury consists of eight persons qualified to serve as jurors in the High Court.

APPEALS FROM THE COUNTY COURT. If the debt or damage claimed exceeds £20, an appeal lies, with the leave of the Judge, from his decision, upon any question of law, but not of fact, or on the admission or rejection of evidence, unless the parties have previously agreed that such decision shall be final.

By the Judicature Act, 1873, appeal lies first to a Divisional Court of the High Court of Justice, and thence, by leave of the Court, to the Court of Appeal and under the Appellate Jurisdiction Acts to the House of Lords.

Appeal from a decision given in the County Court after 1st January, 1935, lies to the Court of Appeal and not as formerly to the Divisional Court The section applies to all appeals brought under any of the enactments set out in the first column of Part II of the Schedule to the Administration of Justice (Appeals) Act, 1934. (Section 2.)

CHAPTER XXIX

CIVIL JURISDICTION (*continued*)

(b) Equity

APART from Common Law and Statute Law, the most important department of our legal system is Equity.

"*Equity* means any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles." (*Maine.*) "Equity is the correction of the law when it fails through its too great generality." (*Aristotle.*)

The fact that we have two distinct bodies of rules, known as Common Law and Equity, is due to the historical fact that we had for centuries, and until 1875, distinct Courts, each of which administered only one set of rules. The result was that the Common Law Courts and the Courts of Chancery had often different remedies for the same right.

The Court of Chancery was commonly called the Court of Conscience, because it had jurisdiction to prevent a successful litigant in the Courts of Common Law from enforcing the remedy which he had obtained there.

The object of the Court of Chancery was to execute justice with clemency when conscience was opposed to the rigour of the law. Equity fulfils the law; it does not destroy it. Its object was to provide a remedy where the Common Law was deficient. Greater precision made the law less elastic, and legislation had not reached the point when it could fill the gap caused by the failure of the Courts to keep pace with the needs of a growing civilization.

The rules of Equity are a sort of supplement or appendix to the Common Law. They assume its existence, but they add something further. In this way Equity is an *addendum* to the Common Law A Common Law right was practically, though not theoretically, nullified by the existence of a countervailing equitable right. In this sense we may speak of a conflict or variance between the rules of Law and the rules of Equity, in the language of Section 25 of the Judicature Act, 1873, as now re-enacted in the Supreme Court of Judicature Act, 1925. (Sect. 44.)

Like the Common Law, the rules of Equity are judicial law, *i.e.*, to find them we must look in the first instance to the decisions of the judges who have administered Equity.

History

The Court of Chancery is not so ancient in its origin as the Courts of Common Law, because the necessity for the existence of such a Court arose only from the harshness of rigidly applying the principles of the Common Law and the unyielding rigour with which they were administered.

In the thirteenth century there were three great Courts definitely established, viz.: King's Bench, Common Pleas, and Exchequer. All were King's Courts as opposed to Local Courts, Lords' Courts, or Ecclesiastical Courts. All these three Courts administered substantially the same law, which by the time of Edward I was already called the Common Law. These Courts continued to exist until 1875, and were known as Common Law Courts. Outside these Courts was the Chancellor, who is "the King's Secretary of State for all departments." Whatever writing had to be done in the King's name was done by the Chancellor or through him and his officers.

THE LORD HIGH CHANCELLOR (from *cancellarius*, clerk). Under the Norman and Angevin kings the Chancery was the secretarial bureau, and the Chancellor was chief domestic chaplain to the King. He did the secretarial work, being the Secretary of State for all departments, and always at the King's ear. To him was entrusted the Great Seal, by which the Acts of State and Royal documents were authenticated. The earlier Chancellors were ecclesiastics, and in administering Equity they followed the Common Law. It was not until Elizabeth appointed Nicholas Bacon Lord Keeper, in 1558, that the Court of Chancery had a professional lawyer at its head. It is the Chancellor's position as Keeper of the Great Seal which puts him at the head of the English legal system, and makes him the legal centre of the Constitution. All writs ran out of the Court of Chancery, and are still attested or witnessed by the Lord Chancellor.

In one way the Chancellor was already brought into relation with the administration of justice. The writs, *i.e.*, the King's commands that a person shall appear in one of the King's Courts in answer to a claim, were issued from his office. The Chancery, *i.e.*, the Chancellor's office, had a power (Statute of Westminster II, 1285) of framing new writs *in consimili casu*, *i.e.*, to meet new cases sufficiently like those for which writs already existed and new writs were from time to time framed.

It sometimes happened that the working of the law and procedure of the Common Law Courts resulted in particular cases in injustice and hardship. Petitions for extraordinary relief in civil cases were addressed to the King and his Counsel. These

were in practice referred to the Chancellor. He was the King's Principal Secretary, a member of the Council, and the specially learned member, and to him it was natural to send the suppliants for extraordinary relief. In the course of time complaints were addressed not to the King but to his Chancellor. He considered the petition, or Bill, as it was called. If he thought that there was anything in the case, he issued a writ, which required the person complained against to appear, not in a Common Law Court, but before the Chancellor, and answer the petition on oath. The writ was called a *subpoena*, because it required him to appear upon pain of forfeiting a sum of money. The Chancellor heard the whole case himself without a jury.

This sort of interference, which had started as a matter of special favour in special cases, gradually became a regular practice. The Chancellor developed what in effect was, and came to be known as, a Court—the Court of Chancery.

The business of the Court increased rapidly, and the Chancellor, who had many other duties to perform, from the time of Henry VIII onwards cast some of his growing judicial work upon the Master of the Rolls. The latter was originally a very subordinate officer, with charge of the documents of the Court.

In 1535, Henry VIII struck a great blow at uses in the Statute of Uses. From the Reformation onwards the Chancellor was usually a layman. Bishop Williams, under Charles I, was the last clerical Chancellor. Again, the Chancellor came to be usually a lawyer. Lord Shaftesbury, under Charles II, was the last Chancellor who was not a lawyer. In the sixteenth century and the beginning of the seventeenth, *fraud* and *accident*—especially the accidental loss of a document—were regarded as matters peculiarly appropriate for relief in a Court of Equity—matters with which a Common Law Court could not sufficiently deal. Mortgages form a special subject with which the Chancellor dealt.

In the seventeenth century the Chancery had to struggle for its life against the Common Law Courts. A great quarrel broke out between Chief Justice Coke and Lord Ellesmere, the Chancellor, and it was decided by James I in favour of the latter.

Under the Commonwealth there were proposals for reforming and even abolishing the Chancery.

Meanwhile, the Court of Exchequer developed an Equity jurisdiction—an Equity side—which was abolished in 1841. The work proceeded but slowly, and additional Judges, called Vice-Chancellors, were appointed—first one, later three. The Chancellor gradually retired from acting as Judge of first instance, and reserved himself for the Court of Appeal in Chancery, which was established in 1851, and for the House of Lords.

Thus there was superimposed upon the older system of law a new one known as Equity. Equity was used for two purposes—

1. To enforce cases of transactions which give a moral right but a right unknown to Common Law. In particular, cases of what are called " uses " or trusts.

2. To give more effectual remedies for existing legal rights, *e g.*, where the petitioner has been assaulted and beaten, or turned out of his property, but for some reason could not get redress, because he is poor and his opponent is rich and powerful, because juries are corrupt or timid.

Chancery Division

THE JUDICATURE ACTS came into force in 1875 Since that date the rules of Common Law and Equity are recognized and administered in the same Courts. They still remain distinct bodies of law, governed largely by different principles. The Judicature Acts, in 1875, abolished the old Court of Chancery, as they abolished the Common Law Courts and certain other Courts They established a new Court—the High Court of Justice—which has all the powers of a Court of Common Law and a Court of Equity, and in which both sets of rules, the rules of Law and the rules of Equity, are administered ; but in which, if there is " conflict or variance " between them, the rules of Equity are to prevail. The King's Bench Division and Chancery Divisions are no longer distinct Courts, though, as a matter of working convenience, matters which involve mainly Common Law come before the King's Bench ; those which largely involve Equity come before the Chancery Division.

Multiplicity of proceedings is avoided. The general result of the fusion of Law and Equity has been, then, not to alter substantive law, but merely to alter and simplify the procedure.

THE MASTER OF THE ROLLS. The Master of the Rolls is the general deputy of the Lord Chancellor. All orders made by the Master of the Rolls (except such orders as the Lord Chancellor alone could make) are valid, subject to an appeal to the Lord Chancellor.

In addition to the Master of the Rolls, there are six Equity Judges of the Chancery Division of the High Court of Justice, each sitting separately and without a jury. Of considerable importance in the Chancery Courts are the Masters and Registrars, who undertake a large amount of the work of the Division.

JURISDICTION OF THE CHANCERY DIVISION

The Judicature Act, 1873, Section 34, now Section 56 of the Supreme Court of Judicature (Consolidation) Act, 1925, assigned

to the Chancery Division all causes and matters for the following purposes—

1. *The Jurisdiction*, exercised by the High Court of Chancery as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court.

2. *Estates*—

(*a*) The administration of the estates of deceased persons.

(*b*) The raising of portions or other charges on land.

(*c*) The redemption or foreclosure of mortgages.

(*d*) The sale and distribution of the proceeds of property subject to any lien or charge.

(*e*) The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases.

(*f*) The partition or sale of real estates.

(*g*) The rectification, or setting aside, or cancellation of deeds or other written instruments.

3. *Partnerships*. The dissolution of partnerships and the taking of partnerships or other accounts.

4. *Trusts*. The execution of trusts, charitable or private.

5. *Wards* The wardship of infants, and the care of infants' estates. The Guardianship of Infants Act, 1925, has extended powers in this connection.

6. *Statutory Jurisdiction*. Acts of Parliament have from time to time assigned other matters to the Chancery Courts. The statutory jurisdiction of the Court of Chancery related principally to—

(1) Charities.	(4) Infants.	(7) Patents.
(2) Companies (Winding-up).	(5) Married Women.	(8) Copyrights.
(3) Trusts.	(6) Bankruptcy.	(9) Contracts.

The common attribute of all the causes is that they relate to property.

Maxims of Equity

There are certain general principles on which the Court of Chancery exercised its jurisdiction. Many of these have been embodied in the so-called maxims of equity. Snell informs us that they do not cover the whole ground, and, moreover, they overlap, one maxim containing by implication what belongs to another.

The twelve maxims are—

(1) Equity will not suffer a wrong to be without a remedy.

(2) Equity follows the law.

(3) Where there is equal equity, the law shall prevail.

(4) Where the equities are equal, the first in time shall prevail.

(5) He who seeks equity, must do equity.
(6) He who comes into equity, must come with clean hands
(7) Delay defeats equity.
(8) Equality is equity.
(9) Equity looks to the intent, rather than to the form.
(10) Equity looks on that as done, which ought to have been done.
(11) Equity imputes an intention to fulfil an obligation.
(12) Equity acts *in personam*.

Law of Property

The Law of Property Act, 1922, was intended as a foundation for the consolidation, with very considerable changes, of the Statute Law as to—

(1) The law of property generally.
(2) The law of the devolution of property on intestacy.
(3) The law relating to the settlement of land
(4) The law of trusts.
(5) The law relating to the registration of land charges.
(6) The law as to the registration of title.

In 1924 an amending Act was passed with the object of consolidating and amending the existing law of real property, and so on 9th April, 1925, there were enacted the six great statutes which have made so many and so great alterations in the law of property and of conveyancing, viz.—

(i) The Law of Property Act, 1925.
(ii) The Administration of Estates Act, 1925.
(iii) The Settled Land Act, 1925.
(iv) The Trustee Act, 1925.
(v) The Land Charges Act, 1925.
(vi) The Land Registration Act, 1925.

This is administered principally in the Chancery Division, subject to the general powers to distribute High Court business given to the Lord Chancellor by Sect. 14 of the Administration of Justice Act, 1925.

PROCEDURE. Witnesses figure in these Courts much less than in other Courts, because the questions for decision are almost entirely questions of law. A jury is almost unknown in these Courts.

Generally, such facts as are in dispute are left to the Judge to decide, but if the Court is in doubt or unwilling to decide the issue, it has power to send the whole case, or any issue of fact, to be tried by a Judge and jury on the Common Law side, viz., the King's Bench Division.

Practically the whole of the work is done in London with the exception of that which is within the jurisdiction of the Court of County Palatine of Lancaster, which sits at Manchester and Liverpool. The County Courts can deal with Equity cases where the value of the property in dispute does not exceed £500.

APPEALS. One division of the Court of Appeal deals with appeals from these Judges, and consists, like the other division, which deals with appeals from other Courts, of three Judges.

Bankruptcy

The basis of the law of bankruptcy was the statute 4 Henry VIII, c. 4, where we find the first mention of the liabilities of insolvent debtors. This was followed by 13 Eliz., c. 7, which created the distinction between traders and other people.

Before 1831 creditors might be said to have had full control of the administration of bankrupt estates. On all hands the most general dissatisfaction was expressed with that state of things, which was no other than chaotic. In 1831 an Act was passed, which was known as Lord Brougham's Act, and which, for the first time, introduced a system of official administration. In the first instance, it introduced it in a very limited form and to a very limited extent. It introduced a class of officials who were known as Official Assignees attached to the London Bankruptcy Court, and not to the Courts in the country districts ; and to these officials was given, practically, the control of the administration of bankrupt estates.

In 1840 a Royal Commission was appointed to consider the subject of bankruptcy ; and this Commission recommended the extension of official assignees to the country generally. In 1842 the system was accordingly extended with general approval. In 1847 there was a Select Committee, which reported in favour of the system, and it was unanimously approved by the mercantile world. In 1849 there was another Select Committee of both Houses, which dealt with other branches of the subject, and the Act which followed confirmed the officers in their functions.

It was not until 1861, thirty years after the first institution of these assignees, that the system was generally condemned and an Act was passed which very much limited their duties and practically reduced them to nonentities. In 1864 there was a celebrated committee which reported entirely against the system and advised that official assignees should be totally abolished, and in 1869 this was done, and the public entered once more on a system of voluntaryism, which led to absolute chaos and gave general dissatisfaction.

The Bankruptcy Act, 1883, was introduced by the late Right Hon. Joseph Chamberlain when President of the Board of Trade. It made a fresh departure in bankruptcy legislation. A severance was made between judicial and administrative functions. Judicial functions were, of course, left to the Courts, but administrative supervision and control were entrusted to an executive department of the State, namely, the Board of Trade.

Creditors still retain the general control over the estate of the bankrupt · but the conduct of the bankrupt is the subject of an independent investigation with a view to his punishment if his insolvency is the result of culpable recklessness or fraud. Trustees are subject to the supervision of the Board of Trade, who require them to give security, audit their accounts, and exercise a general superintendence over their dealings.

According to the theory of the Act of 1869, the debtor and his creditors were the only parties concerned in a bankruptcy. The Act of 1883 gave effect to the principle that bankruptcy is a matter which, directly, if not indirectly, affects the community at large, and not merely a matter between him and his creditors. The Act accordingly provided that in all proceedings under it, whether they terminate in bankruptcy proper, or in a composition or deed of arrangement for the benefit of creditors, the debtor shall have his affairs investigated and reported upon by an officer of the Board of Trade (called the Official Receiver), and shall undergo a public examination. That is the ordeal through which every insolvent debtor must pass. Whether he will be allowed to enter into a composition or to obtain a discharge will depend on the result of those investigations into his previous conduct.

The Act of 1883 was amended by the Bankruptcy Act, 1914.

Mode of Procedure. Proceedings are commenced by either a creditor or a debtor presenting a petition to the Court. This results in the issue of a Receiving Order. The Official Receiver takes charge of the debtor's property. Within seven days of the Receiving Order the debtor must furnish a Statement of Affairs. This is followed by a public examination on oath, which is an inquiry into the facts alleged by the creditors, into the debtor's statement, and whether he has been guilty of misconduct.

After fourteen days from the date of the Receiving Order a meeting of creditors is held, which decides whether the debtor be adjudged bankrupt or whether a composition or an arrangement be accepted. If the debtor is made a bankrupt, the creditors appoint a trustee, or, failing the creditors, the Board of Trade appoints. The duties of the trustee are to realize the estate and

to divide the proceeds, after the payment of the preferential creditors, including the Crown, local authorities for rates for twelve months, landlord for rent for six months, employees for salary for three months, and for wages for two weeks.

At any time after the public examination, the bankrupt can apply for his discharge. The Court is influenced, when considering the application, by the reports of the Official Receiver. The Court can grant or refuse a discharge, or grant a discharge conditionally. The discharge is generally granted, provided that a reasonable dividend has been paid, that accounts have been properly kept, that the bankrupt has not been guilty of rash speculation or misdemeanour, and has not been recklessly extravagant.

Until the discharge is granted the bankrupt cannot obtain credit for £10 or more without disclosing the fact that he is an undischarged bankrupt. If he does he is guilty of a criminal offence and is liable to imprisonment.

Until discharged, the bankrupt is placed under certain legal disabilities. He may not sit in Parliament, his place as member of a local authority will be vacated, and he may not act as a Justice of the Peace. While he is undischarged, whatever property comes to him belongs to his creditors, to the extent of his indebtedness.

London

The judicial work in London was formerly under the direction of the King's Bench Division of the High Court of Justice. Business in connection with Bankruptcy was, by order of the Lord Chancellor (Viscount Birkenhead), dated 15th August, 1921, by virtue of Section 97 of the Bankruptcy Act, 1914, on and after 12th October, 1921, assigned to the Chancery Division of the High Court of Justice. In the provinces the judicial work is under the County Court. In London there are two Judges of the Chancery Division specially charged with bankruptcy business

Appeal is to the Court of Appeal, and thence to the House of Lords. Appeal from the County Court is to a Divisional Court of the High Court of Justice, and thence to the Court of Appeal, whose decision is final. There is no appeal at all, unless £50 is at stake or the Court appealed from gives leave.

The administrative functions are still in the hands of the Board of Trade, described in Chapter XX.

Chancellor of the Duchy of Lancaster

A DUCHY is a territory over which the supreme head is not known as king or prince, but as duke. In modern times the most common instances of duchies are those in Germany.

A PALATINATE is a territory or district under the rule or jurisdiction of a palatine or count palatine. A Palatine is one having a jurisdiction (within the territory) such as elsewhere belongs to the Sovereign alone. In England, the rulers of Cheshire, Durham, and Lancaster possessed these rights, and they still nominally exist in the last-named.

The Chancellor of the Duchy of Lancaster is a member of the Ministry, and is not infrequently a Cabinet Minister. The Court from which this office takes its name had its origin in 1399 in the reign of Henry IV, who, conscious that he was more rightfully Duke of Lancaster than King of England, determined to save his right in the Duchy, whatever should befall the kingdom; and accordingly, with the authority of Parliament, severed the possessions, liberties, etc., of the Duchy from the Crown, and settled them on himself and his heirs. So they continued during this and the two following reigns, and, after being re-appropriated to the Crown by Edward IV, were once more severed from it by Henry VII, and have remained distinct ever since.

The Chancellor himself has very few duties in connection with the office, which is usually therefore bestowed upon some prominent statesman whose abilities it is desired to utilize in the consideration of general questions of policy, and whose time is thus left free for that purpose. The Chancellor of the Duchy of Lancaster recommends for appointment the Justices of the Peace for the county and appoints the Vice-Chancellor of the County Palatine of Lancaster. The Court is a Chancery Court, and its jurisdiction is exercised by a Vice-Chancellor. The Administration of Justice Act, 1928, Section 14, contains provisions respecting tenure of office, precedence, and qualifications of the Vice-Chancellor of the County Palatine.

CHAPTER XXX

THE ECCLESIASTICAL COURTS
THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION

The Ecclesiastical Courts

ALONGSIDE of the great Code of Civil Law of Justinian, there grew up, in close imitation of it, a great body of *Canon Law*, composed of decrees of Church Councils, and Letters and Decisions (" Bulls ") of the Popes. It was first systematized by Gratian of Bologna in the twelfth century.

In this country, from William the Conqueror onwards, the Church Courts were separated from the Lay Courts. The Bishop had his Court. The Archbishop had a superior or prerogative Court. From him, before the Reformation, there was an appeal to the Pope. These Courts were treated by the King's Courts as subordinate, in the sense that the King's Courts could issue prohibitions to prevent them from dealing with matters that did not concern them.

The Canon Law recognized the Pope not only as the supreme legislature but also as supreme Judge of the Church, possessing not merely appellate but also original jurisdiction over all things spiritual. With the proclamation of Henry VIII as Defender of the Faith, the Church was brought within the State, and it became subject to the power of the Crown, and the result was the substitution for the Canon Law of the King's Ecclesiastical Law

The Law of the Church, like the Maritime Law, has ceased to possess an international character. The Church still retains her Courts, *e.g* , Consistory Courts ,with some remnants of this ancient jurisdiction. Their jurisdiction over strictly ecclesiastical offences of clergymen, such as heresy and ritual, still remains and is still exercised by them.

The Public Worship Regulation Act, 1874, provides for the appointment by the Archbishops of Canterbury and York of a single Judge for their Provincial Court, so that technically the Dean of the Court of Arches is also the "official principal" of the latter Court.

THE PROVINCIAL COURT of Canterbury is the Court of Arches, and that of York is called the Chancery Court of York.

The quaint name of the Court of Arches is due to the fact that it used to be held in the Church of St. Mary-le-Bow, which

was built upon arched supports It is provided that, in any case of alleged offences by an incumbent against the ceremonial law of the Church of England, the Archdeacon, or Churchwardens, or any three parishioners, may complain to the Bishop of the Diocese. The latter may hold that no proceedings shall be taken, or he may, if all the parties to the dispute are willing, decide the matter himself. But if the parties do not agree to accept the bishop's ruling, then the matter must go to one or other of the archiepiscopal Provincial Courts.

THE HIGH COURT OF DELEGATES. This Court was established after the Reformation to hear and determine appeals from any of the Provincial Courts of the Archbishops. In 1832, jurisdiction was transferred to the Privy Council, and is now exercised by the Judicial Committee of the Privy Council.

THE COURT OF HIGH COMMISSION. This Court was created by the Act of Supremacy of 1557, but was declared illegal by the Bill of Rights, 1689.

THE STATUTORY COURTS OF THE NINETEENTH CENTURY. The Church Discipline Act, 1840, was passed to deal with the cases of " clerks in holy orders " who may be charged with any offence against the laws ecclesiastical or concerning whom there may be scandal or evil report as having offended against the said laws. This Act has for most purposes been repealed, and the Clergy Discipline Act, 1892, now operates Appeal may also lie to the King's Bench Division against a sentence of inhibition under the Beneficiaries Act, 1926, in which case the Judge is assisted by the Archbishop.

The Ecclesiastical Courts still have a jurisdiction over matters of exclusive ecclesiastical cognizance, *e.g.*, questions of doctrine and ritual, ordination, consecration, celebration of Divine services, disputed application for faculties.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION

There are three minor bodies of law, Probate, Divorce, and Admiralty, which were developed in jurisdictions distinct from the Common Law Courts and the Court of Chancery.

The Judicature Act, 1873, assigned to the Probate, Divorce, and Admiralty Division the jurisdiction of—

(1) The Court of Probate.
(2) The Court for Divorce and Matrimonial Causes.
(3) The High Court of Admiralty.

The Division possesses a President and, since 1925, two puisne Judges. The President must be a barrister of not less than fifteen years' standing.

Probate

A Probate Court is a Court having jurisdiction of probate and administration. The early Common Law provided that a man could not make a will in regard to his real estate, except where there was a local custom to that effect. With regard to goods and chattels, including leaseholds, it was admitted that he had at least a limited power to dispose by will—limited because his wife and children might have rights which he could not override.

At that time the Church had a definite interest in the goods of the deceased. The religious beliefs of the period required at least a substantial part of his property to be devoted to the good of his soul. Thus the Church Courts assumed a jurisdiction over dead men's goods. If there was a will, the Bishop's Court was the proper place in which it must be proved. If there was no will, then the Bishop took charge of the goods which he left, and made a suitable disposition of them. In 1285, the " Ordinary," *i.e.*, the ecclesiastical superior who had the jurisdiction, was required by statute to pay the debts of the intestate. In 1357 he was required by statute to entrust the administration of the property to the near relations of the deceased. Thus we get the office of *administrator*.

The Reformation left the jurisdiction untouched. The Statute of Distribution, 1670, established a code for the distribution of the property of intestate persons, modelled largely on the Roman Law. The system lasted until the middle of the nineteenth century. There were as many Probate Courts as there were dioceses, in addition to the Prerogative Courts of the two Archbishops, and a number of Courts in places called Peculiars—places outside a Bishop's jurisdiction, and under a special ecclesiastical jurisdiction of their own. The Probate Act, 1857, provided that the whole of the jurisdiction of the Ecclesiastical Courts in Probate and Administration should be transferred and vested in a new Court—the Court of Probate.

Finally, the Judicature Act, 1873, merged the Court of Probate in the Probate, Divorce, and Admiralty Division of the High Court of Justice.

The jurisdiction includes all matters transferred from the Ecclesiastical Courts by the Probate Act, 1857, including—

(1) Jurisdiction over probate of wills.

Probate is the official proving of a will; also the officially verified copy of the will, together with the certificate of its having been proved, which are delivered to the executors.

(2) Grants of letters of administration.

The administrator is the person who, in the absence of an

executor, must deal with the deceased's property, pay his debts, and make a proper division amongst those entitled. He receives what are called *letters of administration*, which give him the title to the property. Even where there is a will, but no executor is appointed, there must be a grant of letters of administration *cum testamento annexo*, with the will attached. Without probate of the will or letters of administration, neither the executor nor the administrator can take any steps in any other Court, for the executor's proof of title, and the administrator's title itself could be given only by the Ecclesiastical Court.

The Principal Probate Registry is under the control of a Chief Registrar, and there are District Probate Registries under Registrars in many of the important centres.

The Court of Probate is presided over by a single Judge, to whom was given the rank and precedence of the puisne Judges of the superior Courts. It was provided that he should be the same person as the Judge of the Court of Admiralty. An appeal from his decision lies to the House of Lords.

Divorce

From the early Middle Ages the Ecclesiastical Courts assumed a jurisdiction in matrimonial affairs. They decided questions of the legality of marriage, and of legitimacy, and they granted a divorce *a mensa et thoro* somewhat similar to the modern decree of judicial separation. A decree of divorce in the modern sense, which allows the parties to marry again, was not recognized by the mediaeval church.

The Probate Act, 1857, took away the whole of the matrimonial jurisdiction of the Ecclesiastical Courts and vested it in a new Court, the Divorce Court. All causes and suits of matters matrimonial were vested in the Court for Divorce and Matrimonial Causes.

By the Judicature Act, 1873, both are united into a branch of the High Court of Justice called the Probate, Divorce, and Admiralty Division.

The Administration of Justice Act, 1920, provides that Divorce cases may be taken by the Judges of the King's Bench Division of the High Court of Justice in Assize towns. (See page 192).

The King's Proctor

A proctor was originally licensed by the Archbishop of Canterbury to undertake duties now performed by solicitors in the Courts; and the King's Proctor so acted in all cases concerning the King. He is now the proctor or solicitor representing the Crown. In probate and divorce actions, or actions for declarations of nullity of marriage, he may, under the direction of the Attorney-General, and by leave of the Court, intervene in a suit for

the purpose of proving collusion between the parties. His power of intervention is limited by the Matrimonial Causes Act, 1860, to cases of collusion only; but he may also, as one of the public, show why a *decree nisi* should not be made absolute.

Any person may give information to the King's Proctor at any stage of a case, and if from that information, or from inquiries by his representatives, the King's Proctor suspects that the parties are acting in collusion, he may intervene and subpoena witnesses, although he cannot compel any person against whom he is making allegations to give evidence.

A decree in divorce is always a *decree nisi*—that is, a " decree unless." It does not operate at once, but is made absolute after six months, unless sufficient reason can be shown why it should not be. During these six months the case can be re-opened. In showing cause against a *decree nisi* being made absolute, the King's Proctor stands in the same position as the rest of the public. Further, he has to get the directions of the Attorney-General, which the rest of the public do not. Only when a decree has been made absolute and (if there is a right of appeal) one additional month has passed, can either of the parties in a case legally marry again.

Admiralty Jurisdiction

The Admiralty was quite a Civil Court at first, and was a Council of Master Mariners to enforce the Marine Codes of Oléron, Barcelona, and the " Kingdom of Jerusalem," and to this day the non-royal character is faintly reflected in the fact that Naval Commissions are not signed by the Sovereign.

The jurisdiction of the Admiralty was divided into—

(1) Ordinary or " instance " jurisdiction.
(2) Prize jurisdiction.

(1) Ordinary jurisdiction comprised—

(*a*) Criminal jurisdiction.
(*b*) Civil jurisdiction.
(*c*) Admiralty droits.

(*a*) CRIMINAL JURISDICTION. The Admiral, whose office dates from the end of the thirteenth century, had at first no jurisdiction apart from the discipline of the fleet. In the course of the fourteenth century he assumed jurisdiction to punish crimes, such as piracy committed at sea, as well as a jurisdiction over shipping and commercial matters. This was exclusive on the high seas and up to low-water mark over British subjects over the crew of a British ship, and over everyone in cases of piracy at Common Law.

The criminal jurisdiction was virtually transferred to the ordinary criminal Courts by a provision that offences committed at sea might be punished as though they had been committed on land. It is now exercised on the Crown side of the King's Bench Division, by the Central Criminal Court, and by the Assize Courts.

(*b*) CIVIL JURISDICTION. In the Middle Ages there was a number of Courts with a commercial and maritime jurisdiction, dealing with commerce and shipping. These were mainly local Courts, *e.g.*, in the Cinque Ports. These took cognizance of the Law Merchant referred to in Chapter XXVIII. Gradually these Courts decayed, owing to the encroachment of the Admiralty and the Common Law Courts. The training in the Roman Civil Law and the development of a class of barristers known as Advocates of Doctors Commons and solicitors known as Proctors was one reason for the fusion of these Courts.

The Act of 1857, which established the Probate and Divorce Courts, provided that the ordinary Judge of these Courts should be the same person as the Admiralty Judge. Thus it was a natural step that, in 1875, the Probate, Divorce, and Admiralty jurisdictions should be entrusted to a single division of the High Court.

Civil jurisdiction includes cases of—

(i) Salvage, bottomry, damage, towage.
(ii) Goods supplied to foreign ships.
(iii) Building, equipping, and repairing ships.
(iv) Disputes between co-owners.
(v) Booty of war (if the Crown sees fit to refer such cases to it).
(vi) Foreign Enlistment Act.
(vii) Prize jurisdiction within the meaning of—
 (*a*) The Naval Prize Act, 1864.
 (*b*) The Prize Jurisdiction Act.

Appeal lies in the usual manner to the Court of Appeal, except appeals under the Prize Jurisdiction, which lie to the Judicial Committee of the Privy Council.

(*c*) ADMIRALTY DROITS. The Crown had originally certain rights to property found upon the sea, or stranded on the sea-shore, including great fish (such as whales or porpoises), deodands, wrecks of the sea, flotsam, jetsam, and lagan, ships or goods of the enemy found in English ports or captured, and goods taken from pirates. These were granted to the Lord High Admiral, and afterwards transferred to the Consolidated Fund. In 1854 they were put under the control of the Board of Trade, and the Merchant Shipping Act, 1894, regulated the method of dealing with flotsam, jetsam, and lagan within British jurisdiction.

CHAPTER XXXI

APPELLATE JURISDICTION

Court of Appeal

THE Court of Appeal consists of the Master of the Rolls and five Lord Justices of Appeal. These must be barristers of fifteen years' standing or one year a Judge of the High Court.

The following are *ex-officio* members of the Court of Appeal, viz , the Presidents of the Chancery, King's Bench, and Probate, Divorce and Admiralty Divisions ; and any person who has been Lord Chancellor, if on the request of the Lord Chancellor, he consents to act.

Grounds of Appeal include the following, viz.—

(1) The verdict of the jury is against the weight of evidence.
(2) The damages the jury has awarded are too much or too little.
(3) The Judge has made a mistake in the law.
(4) The jury has been prejudiced.
(5) Fresh evidence has come to light since the trial.
(6) The jury found the facts wrongly.
(7) There was perjury at the trial.
(8) The verdict was based on mistake, surprise, or fraud.

As a rule, any civil case may be carried to the Court of Appeal, and then to the House of Lords.

The Court of Appeal may not only order a new trial, but may reverse the decision of the Court below by giving judgment for the appellant.

Its functions consist chiefly in hearing civil appeals from the High Court, but in some cases it hears appeals direct from other tribunals, such as the Chancery Courts in Lancashire and Durham, and all Courts having jurisdiction in lunacy.

The Court sits only in London

The Judicature Acts provide that all appeals to the Court of Appeal from any final order, decree, or judgment shall be heard by not less than three Judges, unless the parties consent to a hearing before two Judges.

The corresponding court in Scotland is the Court of Session.

Appeal lies from the Court of Appeal to the House of Lords.

The Administration of Justice (Appeals) Act, 1934, provides that no appeal shall lie to the House of Lords from any order or judgment made or given by the Court of Appeal after the 1st

October, 1934, except with the leave of that Court or of the House of Lords.

The House of Lords

The Judicature Act, which re-organized the Courts in 1873, abolished the appellate jurisdiction of the House of Lords and made provision for the presence in the Court of Appeal of Judges from Scotland and Ireland. Before this came into effect there was an alteration of opinion and the operation of the Judicature Act, 1873, was suspended till 1875, and then allowed to become operative without the sections affecting the jurisdiction of the House of Lords. The Appellate Jurisdiction Act, 1876, restored to the House of Lords its appellate jurisdiction and provided for the creation, at first, of two, and eventually (1879) of four, life Peers to be known as Lords of Appeal in Ordinary. By an amending Act of 1913, there were six Lords of Appeal in Ordinary. The Appellate Jurisdiction Act, 1929, added an additional Lord of Appeal in Ordinary, making seven in all.

THE APPELLATE JURISDICTION ACT, 1876, declared that an appeal should lie to the House of Lords from an order or judgment of the Court of Appeal in England, and of those Scotch and Irish Courts from which appeals had previously lain to the House of Lords. In view of the jurisdiction over appeals from Scotland and Northern Ireland, it is customary to take one of the Lords of Appeal in Ordinary from each of these countries.

The Appellate Jurisdiction Act also provides that no appeal shall be heard unless three Lords of Appeal are present, and it defines these as the Lord Chancellor, the Lords of Appeal in Ordinary, and other Peers who hold or have held high judicial office.

THE EXISTING JURISDICTION of the House of Lords may be divided into three divisions—

1. Civil Jurisdiction.
2. Criminal Jurisdiction.
3. Cases of Privilege.

1. CIVIL JURISDICTION. Appeal lies to the House of Lords from—
 (*a*) The Court of Appeal in England.
 (*b*) Any Court in Scotland or Northern Ireland from which error or appeal lay to the House of Lords immediately before the passing of the Appellate Jurisdiction Act, 1876.

In appeals from the Court of Session in Scotland it is usual for one of the Scottish Lords of Appeal in Ordinary to be present.

The Act requires that " every appeal shall be brought by way of petition to the House of Lords."

Procedure. In the hearing of Admiralty appeals the House may require the assistance of nautical assessors.

The House may sit to hear appeals during a prorogation, and if the Crown by sign-manual so direct, during a dissolution of Parliament ; while a Lord of Appeal may take his seat during a prorogation.

In 1834 a rule was laid down that only the Law Lords should vote upon appeals.

In 1898 the House of Lords decided that it was bound by its own judgments upon questions of law.

When a decision is given, it is a judgment of the whole House.

2. CRIMINAL JURISDICTION is dealt with on page 186

3. JURISDICTION IN CASES OF PRIVILEGE. The Lords have, by their privilege, jurisdiction in three classes of cases—

(*a*) They can fine and imprison for a definite period for contempt.

(*b*) They can decide on the effect or the validity of the creation of a new peerage by the Crown.

(*c*) They can decide a disputed claim to an old peerage if the matter is referred to them by the Crown.

The Judicial Committee of the Privy Council

The Privy Council, as a judicial body, may be regarded in a sense as the oldest of our Royal Courts, and the direct descendant of the Curia Regis. It is the parent stem from which the other Courts of Law and Equity have sprung. It has been termed a "Court of Criminal Equity." The act of the Crown in allowing or dismissing an appeal according to the report of the Judicial Committee is the direct lineal descendant of the judgment given by the King in person in the Curia Regis.

Committee of the Council with considerable judicial powers was established in 1487. In time it became the notorious Court of the Star Chamber. The abuse of the powers under the Stuarts led to its disappearance in 1641. There still remained, however, certain judicial powers in the King in Council. Chief among them was the determination of petitions brought before it by persons outside the Kingdom.

The Judicial Committee of the Privy Council is said to be the greatest Court in the world.

The Court possesses jurisdiction over four hundred and fifty millions of people of the British Empire.

The jurisdiction is, in theory, that of the King, who is the sole fountain of remedial justice. By the theory of the Common Law, the King does not exercise original jurisdiction—he sees that the Courts do justice. Properly speaking, therefore, it is not by way of appeal that the jurisdiction is found historically to have been exercised, but by an interposition by the King to

enforce the due administration of justice by the local Courts, to prevent abuse, and to entertain applications for redress from his subjects. Thus survives the Roman Law principle of the right of the citizens to appeal to Caesar.

Much of this power was, later, exercised by the Court of King's Bench, and is now exercised by the High Court of Justice, through the King's Bench Division. (*See* Chap. XXV.) After the Court of King's Bench, Common Pleas, and Exchequer had become differentiated and separated from the King's Council, and even after the institution of the Court of Chancery, the King's Council continued to exercise a kind of extraordinary and corrective jurisdiction to prevent violence, corruption, and intimidation, and especially combination and conspiracy, to obstruct or prevent the course of justice.

After the Revolution in 1688 the appeals began to increase, and, in 1696, an Order was made by the Council " that all appeals from any of the plantations be heard as formerly by the Committee who are to report the matters as heard by them and with their opinion thereon to the King in Council."

The origin of all this appellate jurisdiction was a matter of constitutional usage and not derived from any statute, but from 1833 onwards a variety of legislation has been passed, both by the Imperial Parliament and by the Legislatures beyond the Seas, conferring appellate jurisdiction on His Majesty in Council.

In 1832 appeals in ecclesiastical matters were transferred from the High Court of Delegates, which was abolished, to the King in Council, and appeals in Admiralty matters, which had gone to the King in Chancery, were also transferred to the King in Council.

No appeals lie to the King in Privy Council from the Courts of England (except from Ecclesiastical Courts and Prize Courts), Scotland, or Northern Ireland. The first duty of the King being to see that justice was administered to all his subjects, and that duty being exercised by the King in Council, it followed that in the case of all subjects not within the Kingdom there was the right of appeal to the King in Council.

CONSTITUTION. The Judicial Committee is now composed of—

(1) The Lord President of the Council and former Presidents. These in practice never sit.

(2) The seven Lords of Appeal in Ordinary.

(3) All members of the Privy Council who hold or have held high judicial office in the United Kingdom.

(4) Certain Indian Judges appointed under various Acts.

(5) Certain Chief Justices and Judges of the self-governing Dominions—Newfoundland, Canada, Australia, New Zealand, and South Africa.

(6) Two other members of the Privy Council if the Crown thinks fit to appoint them under the Proviso to Sect. 1 of the Judicial Committee Act, 1833.

(7) The Administration of Justice Act, 1928, repealed the limit on the number of Dominion judges who may be members.

Three constitute a quorum. There is no instance in which all those who are qualified have sat.

JURISDICTION. The Judicial Committee of the Privy Council by statute takes cognizance of certain matters of a quasi-judicial character, viz.—

(1) Applications for a licence to print a book when the proprietor of a copyright refuses to publish after the author's death (Copyright Act, 1911).

(2) It is provided generally by the Act of 1833 that the Crown may specially refer any matter it sees fit to the Judicial Committee. Such matters have included a dispute between a legislative council and a legislative assembly, a question of the validity of certain Orders in Council, and disputes between prelates.

(3) The Judicial Committee also hears appeals from—

(*a*) The Ecclesiastical Courts and Prize Courts—the only English cases.
(*b*) The Channel Islands.
(*c*) The Isle of Man.
(*d*) India and the Dominions, the Colonies and Dependencies.
(*e*) English Courts established by treaty in foreign countries.

The cases thus dealt with may involve old Roman-French Law, *e.g.*, Canada, English Common Law (both as existent in this country and as considerably modified by statutes in different dominions), the Indian Codes of Hindoo and Mohammedan Law (*e.g.*, India), or Roman-Dutch Law (*e.g.*, South Africa).

In addition to appeals, there are a great many petitions for leave to appeal. These are generally disposed of on the spot.

PROCEDURE. A decision of the Judicial Committee takes the form of advising the Crown what ought to be done, with a full statement of reasons therefor. The Judicial Committee delivers a single collective opinion, and no one knows if they were, or how they were, divided. It is not bound by its own decisions.

The Judicial Committee Act, 1915, provides that the Judicial Committee may, subject to the approval of the Lord Chancellor and the Lord President of the Council, sit in more than one division at the same time, and in such case, anything which may be done to, by, or before the Judicial Committee, may be done to, by, or before any such division of the Judicial Committee.

The powers of His Majesty in Council to make rules as to the practice and procedure before the Judicial Committee include the power to make orders for the constituting of divisions and the holding of divisional sittings of the Judicial Committee.

In Scottish and Northern Ireland matters the Judicial Committee has no jurisdiction whatever; but appeals from the Irish Free State lie to His Majesty in Council by special leave.

On the hearing of Ecclesiastical appeals, at least three Ecclesiastical Assessors drawn from a rota of Archbishops and Bishops attend.

In Admiralty appeals, an Admiral and a Mercantile Marine Officer usually sit as Assessors.

As a general rule, the appeal to the Privy Council is only competent from the highest Colonial Court, so that a suitor must carry his case through the various Courts of his own Colony before he brings it before the Imperial Tribunal.

Suitors from the highest Courts of the various states composing Canada and Australia have a choice of appeals—either to the Court of the Dominion or Commonwealth, or direct to the Judicial Committee of the Privy Council. If they use the former alternative there is no further appeal unless special leave is granted by His Majesty in Council. In certain cases touching the constitution of the Commonwealth, the right of the Judicial Committee to grant special leave to appeal has been limited. The Dominion of South Africa has one Supreme Court and an Appellate Division to which litigants must appeal, and there is no alternative right of direct appeal to the King in Council. Appeals from the Appellate Division to H.M. in Council can come only by special leave granted in England.

The Judicial Committee sits in Downing Street.

SECTION VII

PUBLIC FINANCE

CHAPTER XXXII

THE FINANCIAL SYSTEM

Introduction

THE question of public finance is bound up with the question of the constitution. Just as the science of public finance emerges when there arises a separation between the income of the Government and that of the Sovereign, so the advances of constitutionalism have turned on the success of the people in obtaining control of the public purse. Generally speaking, the representatives of the various countries have sought for principles of right and justice to guide them in the choice of sources of taxes. As a consequence, we get a general uniformity in the revenue systems of the various countries—with slight differences in detail. Before the War about one-tenth of the wealth annually produced by the nation was taken for the purposes of the national government. Now about one-fifth or one-fourth of the wealth annually created by the nation has to be used for national purposes.

Taxation

DEFINITION. Taxes are an appropriation of private wealth exacted compulsorily from individuals by the State to meet the expenditure necessary to carry out the functions of government.

"The aim of taxation is to raise the largest sum of money with the least trouble." (*Sir George Cornwall Lewis*)

State revenue is determined by State expenditure. But a system of rationing is growing with regard to Government departments.

Financial History

Taxes came into existence on the separation which took place between the King and the ownership of Land, and until there was a division of property there was no necessity for taxes.

A revival of the ancient claims to military service and an acceptance of money payment in lieu of personal render, both of military and feudal duties, introduced the system of taxation.

In primitive times the revenue of the Sovereign was derived almost entirely from land, which was the principal source of

wealth. Most of the State dues were paid in kind. The first tax that was made in money was the Danegeld, which was raised by Ethelred to buy off the Danes in 991 A.D.

Magna Charta, 1215, laid it down that exceptional feudal aids must not be levied without consent of the Great Council.

From the Norman Conquest to the middle of the sixteenth century the chief sources of revenue were—

(*a*) Royal demesne.

(*b*) Customs Duties, so called as denoting customary payments which have been in use from time immemorial. Custom Duty is levied on certain classes of imported goods.

(*c*) Various direct taxes, *e.g.*, aids, benevolences, poll taxes, etc.

Aids were replaced by "movables," which were a kind of property tax, under the title of "fifteenths" and "tenths," the former levied in counties and the latter in towns.

CUSTOMS DUTIES. With the decay of feudalism and the accompanying revival of the state, the latter sought to come into closer contact with its subjects. One of the first efforts which it made was to establish a system of direct taxation. The nucleus of this system already existed in the Port Dues or Custom Duties.

In 1334 the system was revised by Parliament. Another mode was a Poll Tax, which resulted in the precipitation of the Peasants' Revolt in 1381. Parliament imposed a similar tax in 1435, replaced by subsidies charged on movable property. These continued until 1663, when they were replaced by special assessments.

Under the Commonwealth there were subsidies on real and personal property, and then, copying Italy and Holland, Parliament introduced Excise Duties.

EXCISE DUTIES were instituted in 1644 by Pym on beer, wine, and other commodities. They are a system of Inland Duties imposed upon articles of general consumption which are, in the main, not necessaries of life.

At the Restoration, in 1660, the Crown revenue was raised from—

(*a*) Customs, or the old Port Duties.

(*b*) New Excise Duties, in lieu of the feudal duties abolished in 1645, and the old Royal prerogatives called purveyance, etc., together with a temporary Excise Duty which practically duplicated the above.

(*c*) Land Tax at 4s. in the £.

In 1662 was introduced Hearth Money, abolished by William III but later revived as Inhabited House Duty, which was abolished under the Finance Act, 1924.

THE CIVIL LIST was established at the Restoration in 1688 for the maintenance of the Royal Household, expenses of judges,

ambassadors, etc., and for the support of the annuitants and pensioners of the Crown. Since 1787 it has been charged upon the Consolidated Fund. In 1830 the expenses of justice, etc., were separately provided for, and the Civil List has now reference only to the maintenance of the "Dignity of the Crown." It is revised on each succession to the Throne by the appointment of a Select Committee representative of all parties in the House of Commons. Such a Committee was appointed in March, 1936.

The INLAND REVENUE now comprises stamp duties, estate, etc., duties ("death duties"), general stamp duties, taxes, land tax, income-tax (including the surtax), also Mineral Rights Duty and Royalty Welfare Levy. Roughly, the Inland Revenue Department now deals with "direct" taxes only.

Canons of Taxation

As early as the latter part of the sixteenth century a number of French writers had developed a fairly complete system of political science, which included the treatment of the various forms of public finance. This was largely influenced by the principles of the Mercantilist School of Economists. In the eighteenth century, the German school, known as the Cameralists, developed a system of public finance under the name of the "Chamber Science." The Physiocrats, in France, showed a marked advance in their treatment of the questions of public finance as well as of economics in general. But the greatest steps in the development of public finance came with the principles of taxation as laid down by Adam Smith in his *Wealth of Nations*, which formed the basis of the reforms of Pitt, Peel, and Gladstone.

Adam Smith suggested certain Canons of Taxation which may be summarized as follows—

1. *Equality* of sacrifice or ability to pay. The stoutest shoulders should have the biggest burden. Citizens ought to contribute towards the support of the Government as nearly as possible in proportion to the income which they respectively enjoy under the protection of the state.
2. *Certainty* as to time, place, manner, and amount of payment.
3. *Convenience* as to time and manner of payment.
4. *Economy*—
 (*a*) in the cost of collection being low;
 (*b*) in avoiding invisible cost to the taxpayer in expense to him or loss of his time in settling the amount to which he is liable;
 (*c*) it should not have harmful effect on industry.

Direct taxes cost less to collect than indirect.

In considering the principle of economy, the following should be considered—

(1) Number of officers required in collection.
(2) Deduction at the source is desirable, as in the Income Tax.
(3) Taxation should be productive since its object is to secure revenue.
(4) Must not discourage industry. The limit of taxation is said to be reached when the burden begins to impede or to stop the national productive activity.
(5) Temptation to smuggling should be avoided.
(6) Taxes should not be vexatious by causing unnecessary trouble and oppression.

These principles have been from time to time elaborated to meet the changing conditions of industry and trade. As far as possible there should be an encouragement of thrift with an attempt to secure a reduction of swollen fortunes, secured at times of national difficulty.

The basis of taxation in this country is a charge upon necessaries, luxuries, and property. *Ad Valorem Duty* is a duty levied in proportion to the value of the object of the tax without regard to the unit of taxation, *e.g.*, the Entertainments Tax.

Classification of Taxation

Taxation is direct or indirect.

DIRECT TAXATION, or taxes on condition, implies that a tax is levied at once upon the individual, company or corporation in whose hands the income, etc., first arises, *e g.*, Income Tax. Direct taxation is levied on income, as in the case of Income Tax or Land Tax, or on capital, as in the case of Estate Duties.

INDIRECT TAXATION, or taxes on exchange, are duties on goods or on services and actions which are intended to be shifted or passed on to others, *e.g.*, sugar duty, or stamps and licences

Specific Duties are levied according to the unit of taxation, *i e.*, weight or measure with no regard to the value. Specific duties are not nearly so just when compared with *ad valorem* duties, *e.g.*, a commodity at 1s and 5s. per lb. is charged the same duty. It is, however, easier to ascertain and prevent fraud and expense of collection. *Taxes on Acts* include a number of miscellaneous duties, such as stamp duties, licences, fees, etc., some of which are really in the nature of direct taxes, while others might be classed as indirect, but which are more conveniently treated under a special head, because of the manner in which they are imposed, *e.g.*, stamp duties on transfer of property, or on commercial contracts.

The tendency of recent years has been to make direct taxation heavier, and to increase the taxation of capital.

Alternative Classification of Taxation

PROGRESSIVE TAXES are where a graduated scale is adopted, the rate of taxation increasing as the amount of the sum assessed increases, *e.g.*, death duties.

DIGRESSIVE TAXES are those which exempt limited amounts, *e.g.*, Income Tax, but beyond that the rate is proportional.

REGRESSIVE TAXES are where the rate is reduced as the amount of sum assessed is increased.

PROPORTIONAL TAXES are where the rate is uniform on all incomes and quantities, *e.g.*, tobacco duty.

ONEROUS TAXES. Taxation for purposes which present no very obvious advantage to the payee, is called "onerous." The benefits derived are generally indirect and diffused, *e.g.*, expenditure on education, poor relief, and health services.

Principles of Taxation

The chief outcome of the fiscal legislation of the nineteenth century was to render the British tariff purely a financial and economic system. Customs duties were non-protective and were collected on only about a dozen different kinds of articles. They were derived mainly from luxuries, were economically levied, and were very productive.

Some authorities would employ taxation for other ends (moral or social), as for the repression of luxury, the limitation of consumption of strong drink, gambling, etc. Abuses arising from these causes are undoubtedly a proper field for legislative interference, but they do not come within the direct scope of taxation, and to introduce them as prime objects of taxation is to confuse different issues. Other authorities seek to employ taxation as an instrument for levelling or equalizing wealth by interfering with the modes of its distribution. Such an aim is not in accordance with the principles laid down, and attempts to regulate taxation for such an end are a perversion of taxation to other than its legitimate objects.

The system of the development of taxes for protective purposes has been discussed for many years, and was put into operation in this country, under the Safeguarding of Industries Acts, as one of the results of the War. Following the national financial crisis in 1931 and the return to power of the National Government in the autumn of that year, the Import Duties were imposed in 1932, under a Commission responsible to the Treasury. (*See* page 252.)

Income Tax

Principles of graduation, progression, digression, and differentiation in taxation are illustrated in the case of the Income Tax.

Historical. The Income Tax was introduced in its modern form by William Pitt, in 1798, in order to raise the necessary money for prosecuting the war with France, and at the conclusion of peace in 1801 it was abolished. In 1803 it was again imposed as a Property Tax, divided into schedules as at present. After Napoleon had been defeated this was also withdrawn in 1816. In 1842 Sir Robert Peel introduced the Income Tax at 6d. in the £ on all incomes exceeding £150. Since that date it has become one of the principal sources of National Income.

In 1853 Mr. Gladstone commenced a system of abatements which was developed by his successors until it was left by Sir Michael Hicks-Beach, in 1898, in this form, that only incomes of £700 a year and upwards paid the full tax, while there was a gradual scale of digression below that figure down to the figure of total exemption. In 1907 Mr. Asquith introduced the system of *differentiation* between earned and unearned incomes up to £2,000. In 1909 Mr. Lloyd George proposed the Super-Tax upon incomes above that amount, thus introducing the system of *super-graduation.* The present system of Income Tax thus exhibits at the same time principles of *differentiation* as between earned and unearned income ; and principles of *progression* and *digression* by reason of Sur-Tax at one end and the abatements at the other. Progression was opposed by Mill on the ground that, being partial and not equitable taxation, it was a mild form of robbery.

Definition. Income Tax is the direct imposition, in the form of a poundage, payable upon the annual profits of any profession, trade, employment or vocation carried on or exercised in the United Kingdom, by any person whatsoever or wheresoever residing, and also on the profits of trades carried on elsewhere than in the United Kingdom, if carried on by any person, actually or constructively resident in the United Kingdom.

Administration

1. The Department responsible for the levying and collection of Income Tax is the Board (or the Commissioners) of Inland Revenue.

2. Under them are local Inspectors of Taxes, who are permanent civil servants with an expert knowledge of taxing law.

3. The assessments are, however, not technically made by the Inspectors, but by—

(*a*) The General (Local or District) Commissioners (unpaid local gentlemen who supervise and sign the assessments submitted through the Inspectors, and hear appeals) ;

The Finance Act, 1931, altered this procedure, including the method of appointment of local Collectors of Taxes.

(*b*) The Additional Commissioners (who assist the General Commissioners) ; or

(*c*) The Special Commissioners—Government servants with a very high reputation for judicial fairness and expert knowledge of law and practice in tax matters.

Basis of Assessment

Though divided into Schedules for convenience it is one Tax.

Schedules. There are in all five schedules under which income tax is assessed—

Schedule A or Property Tax.
Schedule B or the Farmer's Tax.
Schedule C or the Stockholder's Tax.
Schedule D or the Commercial and Professional Man's Tax.
Schedule E or the Salary and Annuity Tax.

The Finance Act, 1920 (adopting certain recommendations of the Royal Commission on the Income Tax), brought into operation for the year of assessment 1920–21 a radical alteration of the method of granting relief in the Income Tax in favour of earned income as compared with investment income, and of the method of graduating the burden of the tax according to the size of a taxpayer's income and his family responsibilities.

The Finance Act, 1920, replaced the previously existing exemptions, abatements, and reliefs by the various reliefs set out in the following paragraphs.

In introducing the new system, the Act employs two terms not previously used in connection with the Income Tax, viz., "assessable income" and "taxable income."

"*Assessable income*" means, in the case of "earned" income, the amount of such income, as computed for Income Tax purposes, after deducting the amount of the earned income allowance mentioned below, and in the case of other income, the actual amount of such income as computed for Income Tax purposes.

"*Taxable income*" means that part of the "assessable income" upon which Income Tax is actually charged, that is, the "assessable income," less the various deductions referred to below.

The income of a married woman living with her husband is deemed to be his income for Income Tax purposes.

The provisions at present (August, 1936) for relief are as follows—

Deductions in Arriving at Assessable Income
Earned Income Allowance

The differentiation in favour of "earned" income is made, not, as heretofore, by reducing the rate of tax chargeable upon such income as compared with investment income, but by

deducting one-fifth of the " earned " income in order to arrive at the assessable income, subject to a maximum deduction of £300.

Persons over 65 years of age whose total income does not exceed £500 may claim the earned allowance on the whole. To avoid the disproportionate increase in tax where the total income slightly exceeds £500, provision is made for a "marginal relief" which, in effect, restricts the total tax payable by an individual over 65 years to (i) the tax payable were his income £500 plus (ii) one-half of the amount by which his actual total income exceeds £500

The " assessable income " of a taxpayer is, therefore, his total income, as computed for Income Tax purposes, after making the appropriate deduction under this paragraph in respect of any " earned " income.

Total Exemption

Exemption from tax may be claimed where the total income, earned or investment, does not exceed £125 Provision is also made for "Marginal Exemption" where the total income is less than £140

Reliefs Allowed in Order to Arrive at Tax Payable

Where the taxpayer is not wholly exempt the following deductions may be claimed from the total assessable income in order to arrive at the " taxable income " (*i.e.*, that part of the income upon which tax is actually charged) The deductions may be claimed irrespective of the amount of the taxpayer's total income.

Personal Allowance

A personal allowance may be claimed of £100, or, in the case of an individual whose wife is living with him, or wholly maintained by him, £180.

The extended allowance of £180 applies also in the case of a taxpayer who proves that his wife is wholly maintained by him, but is not living with him, and that he is not entitled to make any deduction in respect of the sums paid by him for the maintenance of his wife in computing his income for the purposes of Income Tax.

Wife's Earned Income

Where a taxpayer's total income includes any earned income of his wife, the personal allowance of £180 is to be increased by a sum equal to four-fifths of the amount of such earned income, subject to a maximum additional deduction of £45.

Deduction for a Widower's (or Widow's) Housekeeper Taking Charge of Children

A deduction of £50 may be claimed, under certain conditions, by (*a*) a widower who has resident with him a female relative of his or of his deceased wife for the purpose of having the charge and care of any child or adopted child of his in respect of whom the deduction for children (*see* paragraph below) is given, or in the capacity of a housekeeper; or (*b*) a widow who has a female relative of hers or of her deceased husband resident with her for a like purpose. The expression "relative" here includes any person of whom the taxpayer had the custody and whom he or she maintained at his own expense while that person was under the age of 16 years (*i.e.*, an adopted child).

The deduction in respect of a female relative referred to and in respect of an adopted child are conditional upon proof being given that no other individual is entitled to any deduction for Income Tax in respect of such female relative or adopted child, or, if any other individual is so entitled, that such individual has relinquished his or her claim to the deduction.

If the widower or widow proves that he or she has no such female relative who is able or willing to take such charge, the same deduction may be claimed in respect of some other female person employed for that purpose.

Deduction in Respect of Widowed Mother, etc., Taking Charge of Children

A deduction of £50 may be claimed under certain conditions by an unmarried person who has living with him and maintains at his own expense either his mother (being a widow or living apart from her husband) or some other female relative, for the purpose of having the charge and care of any brother or sister of his in respect of whom the deduction for children or adopted children is given.

Deduction for Children

A deduction may be claimed in respect of any child, stepchild, or adopted child, who is under the age of 16 years, or who, if over that age, is receiving full-time instruction at any university, college, school, or other recognized educational establishment. The deduction allowable is £60 in respect of each child.

No deduction can, however, be allowed in respect of any child or adopted child who is entitled in his or her own right to an income which, after excluding any income to which the child is entitled as the holder of a scholarship, bursary, or other similar educational endowment, exceeds £60 a year.

Deduction in Respect of Dependent Relatives

A deduction of £25 may be claimed in respect of any person whom the taxpayer maintains at his own expense, and who is (i) a relative of his or of his wife and incapacitated by old age or infirmity from maintaining himself or herself; or (ii) his or his wife's widowed mother, whether incapacitated or not; or (iii) a daughter who is resident with the taxpayer, and upon whose services he is compelled to depend, by reason of old age or infirmity.

The deduction under (i) or (ii) is conditional, however, upon the income of the dependent relative not exceeding £50 a year.

The deduction applies in the case of a female taxpayer, with the substitution of " husband " for " wife " above.

Where two or more persons jointly maintain a dependent relative as above, the deduction is to be apportioned between them in proportion to the amount or value of their respective contributions.

Rates of Tax Chargeable on the "Taxable Income"

The following provisions as to the rates of tax chargeable on the taxable income (*i.e.*, that part of the income which is actually charged) apply, whatever the total amount of the income

The first £135 of the taxable income of an individual is chargeable at one-third the standard rate of tax, *i.e.*, for the year ending 5th April, 1937, at 1s. 7d. in the £. The remainder of the taxable income is chargeable at the standard rate of tax, *i.e.*, at 4s 9d in the £.

Where, under the foregoing provisions, tax is not chargeable, or is chargeable at less than the standard rate, in respect of any dividends, mortgage interest, etc., received subject to deduction of tax at the standard rate, the relief due will be allowed when possible as a set-off against the tax chargeable on other income. Any relief due and not so allowed may be claimed by way of repayment.

Allowance for Life Assurance

The allowance is authorized in respect of—

(*a*) Premiums (whether annual or not) paid by the claimant on his own life or on that of his wife;

(*b*) Premiums (whether annual or not) paid by the claimant's wife out of her separate income on her own life or on that of her husband; and

(*c*) Any sum which the claimant, under any Act of Parliament or under the conditions of his employment, is liable to pay, or to have deducted from his salary, to secure a deferred annuity to his widow or provision for his children after his death.

The amount of premiums on which the allowance is to be calculated is subject to certain limitations.

Appeals

All assessments under Schedules D and E are subject to appeal within 21 days to the Special or General Commissioners free of cost, but the notice must state grounds of appeal. Their decision is final, except on questions of law. Appeals to the General Commissioners are allowed annually against Schedules A and B assessments There are no appeals under Schedule C.

(1) Taxpayers resident in Great Britain but not in Irish Free State are completely exempted from all Irish Free State tax.

(2) Similarly, taxpayers resident in the Irish Free State but not in Great Britain are exempted from all British tax.

(3) Taxpayers resident in both countries may claim a measure of relief from both the Irish Free State and Great Britain tax, but are not exempted from either.

Co-operative Societies and Income Tax

In May, 1932, the Chancellor of the Exchequer announced the appointment of a Committee, under the chairmanship of Mr. W. N. Raeburn, K.C., to inquire into the present position of co-operative societies in relation to income tax, and to report whether any modification was desirable. The Committee reported in December, 1932, and recommended—

(*a*) That co-operative societies should be charged to income tax in respect of all trading, whether with members or with non-members, the charge being computed in accordance with the ordinary provisions as to allowable expenses, wear and tear, etc., applicable under the Income Tax Acts in the case of corporate bodies carrying on trade;

(*b*) That the "divi" should be treated as a trade expense;

(*c*) That the statutory exemption granted by Section 39 (4) of the Income Tax Act, 1918, should be withdrawn.

The Chancellor of the Exchequer provided accordingly in his 1933 Budget.

Income Tax Codification

1 Terms of Reference. On the 31st October, 1927, the Chancellor of the Exchequer (the Right Hon. Winston Churchill, M.P.) stated that he proposed to appoint a Committee "to prepare a draft of a Bill or Bills to codify the law relating to Income Tax, with the special aim of making the law as intelligible to the taxpayer as the nature of the legislation admits, and with power for that purpose to suggest any alterations which, while leaving

substantially unaffected the liability of the taxpayer, the general system of administration and the powers and the duties of the various authorities concerned therein, would promote uniformity and simplicity." The Committee was constituted with Sir F. F. Liddell, K.C.B., as Chairman.

On 26th January, 1932, the Chancellor of the Exchequer (the Rt. Hon. Neville Chamberlain, M.P.) stated that he had received certain recommendations from the present Committee in regard to its future constitution, and as a consequence, the Committee was re-constituted with the Right Hon. Lord Macmillan, P.C., as Chairman.

On 26th February, 1932, the Committee was augmented.

2. THE REPORT was presented to Parliament by the Financial Secretary to the Treasury in April, 1936.

3. PROCEDURE OF THE COMMITTEE was not to take any evidence from witnesses but to invite and receive memoranda and representations from a number of bodies. The Committee eventually realized that the only way in which progress could be made would be in the first place to frame a general scheme of re-arrangement of the whole existing statutory material. This having been done, the Drafting Sub-Committee was invited to prepare drafts of clauses embodying the existing law so as to fit into this general scheme These clauses were in turn subjected to the careful and repeated revision of the Committee in a series of successive prints. At the meetings the points arising for discussion were focused in memoranda prepared by the Secretaries under the direction of the Drafting Sub-Committee. On matters of practice, inquiries were addressed to the Board of Inland Revenue

4. THE DRAFT BILL. It is "A Bill to Codify with amendments the law relating to Income Tax." It consists of fourteen Parts, 417 Clauses, and eight Schedules as follows—

Part I. Income Tax and Income.
Part II. Persons chargeable and Rights of Deduction of Tax.
Part III. General Reliefs.
Part IV. Exemptions.
Part V. Sur-Tax.
Part VI. Provisions applicable to Special Classes of Persons and Matters.
Part VII. Assessment and Charge.
Part VIII. Procedure on Appeals and Claims.
Part IX. Collection and Recovery.
Part X. Penalties.
Part XI. Administration.
Part XII. Special Provisions applicable to Scotland.

Part XIII. Special Provisions applicable to Northern Ireland

Part XIV. General.

The eight Schedules are as follows—

First: Irish Free State Double Income Tax Agreement.

Second: Provisions as to privately controlled companies and adjustment of total income of members thereof.

Third: General Commissioners for certain cities and towns.

Fourth Commissioners for assessing the emoluments of certain offices.

Fifth: Declarations by Commissioners and Officers.

Sixth: Special provisions as to special places.

Seventh: Special administration provisions relating to the City of London.

Eighth: Enactments repealed.

The Act will come into operation on the 6th day of April in the year of charge to which it is first applied by an Act imposing Income Tax.

5. PLAN OF DRAFT BILL. In the first place, the whole untidy apparatus of Schedules and Rules has been swept away and all the provisions on each topic have been gathered together from their present scattered sources and embodied in articulate clauses in the Bill. In the course of collecting and classifying the material it was not infrequently found that provisions previously separated, when brought together, disclosed inconsistencies, and these, where it was within the Committee's power to do so, they have endeavoured to reconcile. Where they could not be eliminated without a substantial alteration in the law, attention has been drawn to the matter.

6. PART I. INCOME TAX AND INCOME. No attempt has been made to define "Income" for Income Tax purposes, but a complete classification has been provided of all the various kinds of Income which are taxable. It is a cardinal principle of our Income Tax Law that "either that from which the taxable Income is derived must be situate in the United Kingdom or the person whose Income is to be taxed must be resident there." (*Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, per Lord Herschell, p. 504) The distinction between Income from sources within the United Kingdom and Income from sources abroad thus provides the most general basis of classification. Within each of these two categories will be found enumerated the different kinds of Income which fall within them. The methods of computation and charging differ for different types of income and the division into clauses is for the most part based on this difference

7. PART II. PERSONS CHARGEABLE AND RIGHTS OF DEDUCTION

OF TAX. This part is concerned with the persons who are chargeable with Tax. In Clause 64 a convenient table is provided, showing at a glance the person who is chargeable in respect of each class of Income. A number of special cases are then dealt with, and finally in Clauses 73 to 80 will be found the important rules as to deduction of Tax on making payment of Rent, Interest, Dividends, etc.

8. PART III. GENERAL RELIEFS. This Part deals with Reliefs of various kinds. In Clause 81 a Table shows the nature and the amount of each of the seven forms of Personal Relief. The various methods by which Relief is afforded for business losses are next dealt with, as well as a few miscellaneous cases. Relief from Double Taxation, and particularly Dominion Income Tax Relief, are provided for in Clauses 107 to 114.

9. PART IV. EXEMPTION. Under the two heads of Exemptions relating to particular kinds of property and Exemptions relating to particular kinds of persons, *e g.*, Charities, Educational and Learned Bodies, Friendly Societies and certain Institutions.

10. PART V. SUR TAX. This Part contains the Special Provisions applicable to Sur Tax.

11. PART VI. PROVISIONS APPLICABLE TO SPECIAL CLASSES OF PERSONS AND MATTERS. This Part gathers together a great many miscellaneous topics. Here will be found Clauses dealing with Partnerships, Husband and Wife, Infants and Persons of Unsound Mind, Trustees, Agents, Non-Residents, Wage Earners, Seafaring Persons, the Crown, Diplomatic Persons, etc., Husbandry and Woodlands, Sporting Rights, Tenement Buildings, Life Assurance Companies, Investment Companies, Mines, Railways, and various other special cases are separately treated and illustrate the diversity of the matters for which provision has to be made.

12. PROCEDURAL MATTERS. These are dealt with in

PART VII. Assessment and Charge.
PART VIII. Procedure on Appeals and Claims.
PART IX. Collection and Recovery.
PART X. Penalties.
PART XI. Administration.

In the treatment of these procedural matters the Committee felt themselves less restricted by their Terms of Reference, as the liability of the Taxpayer is not directly involved, and while preserving the "general system of Administration" they have eliminated a number of anomalies and have endeavoured to reduce the present chaos to some semblance of order.

13. SPECIAL PROVISIONS. These are contained in
PART XII. Scotland,
PART XIII. Northern Ireland,
and are necessitated by differences in the Law obtaining in these countries, mainly in matters of administration.

14. PART XIV. GENERAL. This Part provides a definition Clause and some other general provisions.

15. SCHEDULES to the number of eight deal with a variety of special matters (including the provisions relating to "privately controlled companies," but otherwise mostly of an administrative character) with which it was thought better not to encumber the main text of the Bill

CHAPTER XXXIII

CLASSIFICATION OF PUBLIC FINANCE

THE Public Finance may be considered under the classification of Revenue or Expenditure.

Revenue

Revenue may be divided as follows: (1) Tax Revenue, (2) Non-Tax Revenue.

1. TAX REVENUE—
 - (*a*) Customs.
 - (*b*) Excise.
 - (*c*) Motor Vehicle, etc., Duties.
 - (*d*) Estate, etc., Duties.
 - (*e*) Stamps (excluding Fee, etc., Stamps).
 - (*f*) Land Tax and Mineral Rights Duty.
 - (*g*) Property and Income Tax.
 - (*h*) Surtax.
 - (*i*) Excess Profits Duty
 - (*j*) Corporation Profits Tax.
2. NON-TAX REVENUE—
 - (*a*) Post Office.
 - (*b*) Telegraph.
 - (*c*) Telephones.
 - (*d*) Crown Lands.
 - (*e*) Suez Canal Shares.
 - (*f*) Receipts from Sundry Loans.

MISCELLANEOUS RECEIPTS include—

- (*a*) Bank of England.
- (*b*) Companies' Registration.
- (*c*) Mint.
- (*d*) Conscience Money.
- (*e*) District Audit.
- (*f*) Judicature.
- (*g*) *London Gazette*.
- (*h*) Newspaper Registration.
- (*i*) Patents.
- (*j*) Fee, etc., Stamps.
- (*k*) Special Receipts, including sums payable in connection with the great war.

The three chief sources of public revenue are Customs, Excise and Inland Revenue (including Income Tax).

About three-fourths of the public revenue is derived from permanent taxes, which are rarely changed and require no Act of Parliament from year to year. In order to adjust the Revenue closely to Expenditure, and to ensure adequate control by the House of Commons, certain taxes are voted for a year at a time. For many years the imposts so treated were Income Tax and tea. Recently, duties on tobacco, beer, and spirits, and the corresponding excise on beer and spirits, have been increased. Excise duties are a system of inland duties imposed upon articles of consumption, and are indirect taxes upon home products, During the twenty-five years preceding the South African War

the difference between receipts and expenditure was never more than 4 per cent, and in fifteen of those years did not exceed 1½ per cent.

Expenditure

Expenditure may be either (1) out of the Consolidated Fund, or (2) by Vote in Supply.

(1) THE CONSOLIDATED FUND was founded in 1787 by William Pitt. Consolidated Fund charges are not subject to vote in Parliament. They include the following—

(*a*) National Debt Services.
 (i) Interest.
 (ii) Management of the Debt.
 (iii) New Sinking Fund (1923.)
(*b*) Road Fund.
(*c*) Payments to Northern Ireland Exchequer.
(*d*) Land Settlement.
(*e*) Other Consolidated Fund Services.
 (i) Civil List.
 (ii) Annuities and Pensions.
 (iii) Salaries and allowances, *e.g.*, Speaker of the House of Commons, Comptroller and Auditor-General.
 (iv) Courts of Justice.
 (v) Miscellaneous Services.

(2) SUPPLY SERVICES. The principle that grants to the Crown should be freely made by the Estates of the Realm was, it would appear, definitely established in the fourteenth century by the 25th Edward I, as was also the right of inquisition into the application of the funds so provided.

These *Supply Services* are issued in five groups as follows—

(1) *Defence Services*—Excluding Pensions
 (*a*) Army. (*b*) Navy. (*c*) Air Force.
(2) *Miscellaneous Civil Services.*
 Class I. Central Government and Finance.
 Class II. Foreign and Imperial.
 Class III. Home Department, Law and Justice.
 Class IV. Education.
 Class V. Health, Labour, Insurance (including Old Age and Widows' Pensions).
 Class VI. Trade and Industry.
 Class VII. Common Services (Works, Stationery, etc.)
 Class VIII. Non-Effective Charges (War Pensions and Civil Pensions).
 Class IX. Exchequer Contributions to Local Revenues.
(3) *Tax Collection.*
 Customs and Excise, and Inland Revenue Departments.

Departmental Accounts

(1) The Departmental Accounts, which are the responsibility of the Accounting Officer of each department, are kept with a view to the preparation at the end of the financial year of the final accounts, which are called Appropriation Accounts.

(2) These follow the principle adopted by the particular department. On the recommendation of the Select Committee on National Expenditure (Seventh Report, 1918), the Army Estimates were recast. Under the new system there are seven heads, viz.—

(i) The Standing Army;
(ii) The Territorial and Reserve Forces;
(iii) Educational Establishments; Hospitals, Depots, etc.;
(iv) War Office and Staffs;
(v) Capital Accounts (*i.e.*, Stock Accounts and new works);
(vi) Miscellaneous; and
(vii) Non-effective.

(3) The Select Committee recommended that the Civil Service estimates should be similarly reformed, so as to show the true total costs of every separate service. In these estimates, however, the multiplicity of votes, corresponding to real administrative subdivisions, is sufficiently adapted to the purposes of financial control.

New Accounting System

When opening his Budget on 24th April, 1928, the Chancellor of the Exchequer (Mr. Winston Churchill) said that " In order to present a clearer picture I have this year adopted a new form of presentation of our accounts. In the first place I have presented them net instead of gross. Following a suggestion of the Estimates Committee of the House of Commons, I have given directions that, in future certain items (which he enumerated in detail), would be removed from both sides of the account which exactly balance and carried each other."

BALANCE SHEET FOR 1936–37

The Chancellor's Estimate of Revenue and Expenditure

The ordinary revenue and expenditure for the year 1936–37 are estimated as follows—

Estimated Revenue

Inland Revenue

	£	£
Income tax	259,000,000	
Surtax	56,500,000	
Estate duties	89,000,000	
Stamps	27,000,000	
Excess Profits Duty and Corporation Profits Tax	750,000	
Land Tax, etc.	750,000	
Total Inland Revenue		433,000,000

Customs and Excise

Customs	207,525,000	
Excise	110,000,000	
Total Customs and Excise		317,525,000

Motor Vehicle Duties

Exchequer Share	5,000,000
Total Receipts from Taxes	755,525,000
Post Office net receipt	11,256,000
Crown Lands	1,350,000
Receipts from sundry loans	5,000,000
Miscellaneous (including £5,250,000 from Road Fund)	25,250,000
Total revenue	£798,381,000

Estimated Expenditure

	£
Interest and Management of National Debt	224,000,000
Payments to Northern Ireland	7,500,000
Miscellaneous Consolidated Fund Services	3,200,000
Post Office Fund	600,000
Carried Forward	£235,300,000

Brought Forward		£235,300,000

Supply Services

	£	£
Defence (excluding pensions)—		
Army	40,864,000	
Navy	60,205,000	
Air Force	38,556,000	
		139,625,000
Pensions—		
Army	8,457,000	
Navy	9,725,000	
Air Force	444,000	
		18,626,000

Civil

Central Government and Finance	2,146,000	
Foreign and Imperial	9,400,000	
Home Department, Law and Justice	18,362,000	
Education	58,045,000	
Health, Labour Insurance (including old-age and Widows' Pensions	162,725,000	
Trade and Industry	15,837,000	
Works, Stationery, etc	8,552,000	
War Pensions and Civil Pensions	44,988,000	
Exchequer Contributions to Local Revenues	45,199,000	
		365,254,000
Margin for Supplementary Estimates—		
Defence	20,000,000	
Civil	5,600,000	
		25,600,000
Tax Collection—		
Customs and Excise and Inland Revenue votes (including Pensions, £1,084,000)		13,492,000
		562,597,000
Total Expenditure		797,897,000
Surplus		484,000
		£798,381,000

SELF-BALANCING REVENUE AND EXPENDITURE

	£
Post Office—revenue required to meet Post Office expenditure (including £5,038,000 pensions)	£69,344,000
Road Fund—Motor Vehicles Duties apportioned to Road Fund	26,500,000
Total	£95,844,000

CHAPTER XXXIV

FINANCIAL ADMINISTRATION

THE Departments of the State which are principally concerned with Public Finance are the following—

(1) The Treasury.
(2) The Board of Customs and Excise.
(3) The Board of Inland Revenue.
(4) The Paymaster-General.
(5) The Public Works Loan Board.
(6) The Commissioners of Woods, Forests, and Land Revenues.
(7) The Mint.
(8) The Development Commissioners. (*See* Chapter XXIV.)
(9) The Exchequer and Audit Department. (*See* Chapter XXXVI.)
(10) The National Debt Office. (*See* Chapter XXXVII.)

The Treasury

The office of Lord High Treasurer has been " in commission " with certain intervals since 1612. Since the days of George I the powers and duties of the office of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland have been invariably executed by Commissioners, consisting of the First Lord of the Treasury, the Chancellor of the Exchequer, and three Junior Lords (paid) and two Junior Lords (unpaid), with a Parliamentary Secretary (Chief Whip) and a Financial Secretary.

THE FIRST LORD OF THE TREASURY if he fills that office only, has no share in the management of the department, but some minor duties, such as recommending for Civil List Pensions, appertain to his position. A number of appointments are in his gift, and he is *ex-officio* Trustee of the National Gallery and of the British Museum. For nearly eighty years prior to 1885 the office of First Lord of the Treasury was invariably held by the Prime Minister of the day, and is usually so held to-day. The Commissioners forming the Treasury Board seldom if ever meet. The position of First Lord carries with it a salary of £5,000 per annum, and a residence at 10 Downing Street, London, S.W.1.

THE LORD HIGH TREASURER, who, when existing, is the third great Officer of State, had of old the appointment of all officers employed in collecting the revenues of the Crown, the nomination

of all escheaters, and the disposal of all plans and ways relating to the revenue and power to grant leases of Crown lands. This definition of his powers and duties still holds good, to a great extent, in regard to the Treasury Board; although the management of the Crown lands has passed into the hands of the Commissioners of Woods and Forests.

ADMINISTRATION. The Permanent Secretary is the Head of H M. Civil Service. He is assisted by a Second Secretary and three Under Secretaries. The Treasury is divided since May, 1927, into two departments, (1) Finance and Supply Services, and (2) Establishments, over each of which there is a Controller who holds the threads of all general questions relating to his department, and directs the activities of the lesser units, the Divisions.

FUNCTIONS. The Treasury is the highest Financial Department of the State. Few people appreciate how wide and important is the control which the Treasury actually exercises in connection with Government administration. It has control over the management, collection, and expenditure of the public revenue, and exercises a general supervision and control over all the public departments, and no increase of salaries or additions to or material changes in the civil establishments can be made without its authority. All exceptional cases in matters of revenue are referred to the Treasury, and it settles all questions regarding the amount of compensation, allowances, and pensions to be awarded in exceptional cases. The Treasury audits the Civil List, and the accounts of the Comptroller and Auditor-General's Department. It is the accounting department to the House of Commons for a number of Civil Service votes, including those for University Grants, rates on Government property, secret service, criminal prosecutions, learned societies, subsidies, and temporary commissions.

GOVERNMENT WHIPS. The departmental duties of the three Junior Lords of the Treasury are almost nominal. The Parliamentary or Patronage Secretary to the Treasury is chief Government Whip, but he does little more in the department than nominate to a few appointments. The Parliamentary Secretary to the Treasury and the Junior Lords, together with the Treasurer of the Household, the Comptroller of the Household, and the Vice-Chamberlain of the Household constitute the "Government Whips." There are three "Assistant Whips" unpaid.

PARLIAMENTARY COUNSEL. In connection with the Treasury there is a Parliamentary counsel who drafts Government Bills. A barrister or solicitor is also appointed Procurator-General and Solicitor to the Treasury, and is generally known as the King's

Proctor. He is the Crown's nominee when His Majesty becomes entitled to the personal estate of an intestate and administration is granted by the Court. He is also the King's Proctor for divorce interventions. He acts as legal adviser to the Treasury and other departments.

The Chancellor of the Exchequer

THE CHANCELLOR OF THE EXCHEQUER is the effective political head of the Treasury, aided in matters of detail by the Financial Secretary and the Permanent Secretary, who is Head of H.M. Civil Service. The name of the Exchequer is derived from the chequered cloth, figured with squares like a chess-board, which was laid on the table in the Court of Exchequer. The Chancellor of the Exchequer is a member of the Cabinet. He sees that the estimates sent in by the spending departments are framed with due regard to economy, is made acquainted with the views of the revenue departments regarding probable receipts, and upon the figures before him he prepares and opens his Budget in the Committee of Ways and Means. Appointments in the National Debt Office are in his gift, and not only questions affecting public revenue and expenditure, but the National Debt and the best methods of reducing it, and the advances made by the National Debt Commissioners for local loans are all matters within his special cognizance.

The Chancellor of the Exchequer is also Under-Treasurer, Master of the Mint, and Principal Commissioner for the Reduction of the National Debt. He also presides at the nomination of Sheriffs. Like the First Lord of the Treasury, he is provided with an official residence, viz., at No. 11 Downing Street.

"The office of Chancellor of the Exchequer is never a very popular one. A very large part of his time, even under the happiest circumstances, is spent in saying to those who demand public expenditure, No, No, No." (*W. E. Gladstone.*)

THE FINANCIAL SECRETARY TO THE TREASURY is the political assistant to the Chancellor of the Exchequer. Just as the Chancellor is different to other Ministers, so the Financial Secretary is different from other Parliamentary Secretaries. He has wide original powers. All financial business has to traverse his room, and much is settled there without question.

In the House of Commons, all the routine business of finance rests on his shoulders. It is not too much to say that, next after the Leader of the House, the smooth working of the Parliamentary machine depends upon him. He is not in the Cabinet, but his office is recognized as more important than those of some members of that august assembly; and the holder of the office is usually considered in the line for promotion to Cabinet rank.

The Board of Customs and Excise

Commissioners of Customs were first appointed in 1671 and housed by the King in London, the present Long Room replacing that built by Charles II and rebuilt after destruction by fire in 1718 and 1814. In 1830, the Customs business of Ireland was transferred to London. The Excise Department was formerly under the Inland Revenue Department, and was amalgamated with the Customs Department on 1st April, 1909. That Board is one of the four great revenue collecting bodies, and for this purpose exacts the duties prescribed in the Finance Act of each year and pays the money received into the Bank of England for the Exchequer Account. The Board consists of a Chairman, Deputy Chairman, and two Commissioners and Secretaries appointed by the First Lord of the Treasury.

The Board of Inland Revenue

" Inland Revenue " is derived from Income Tax, Estate Duty, Stamps, and Registration, and is partly collected by the Post Office. The principal share, however, is collected by the Board of Inland Revenue, established in 1849. The Board consists of a Chairman, Deputy Chairman, and two Commissioners, with joint secretaries, assistant secretaries, and a staff of officials. In addition to its duties relating to Income Tax and Estate Duty, the Board has many important duties in connection with the Registration of Joint-Stock Companies, Business Names, Newspapers, and Bank Returns

The Paymaster-General

The office of Paymaster-General dates from the Restoration, and was consolidated with several other offices in 1835 and 1848. His duties are to make the payments required by the several departments of the Government out of sums placed to his account for that purpose by order of the Lords of the Treasury out of credit on the Exchequer Accounts granted by the Comptroller and Auditor-General. The Paymaster-General is unpaid, a Privy Councillor, and a member of the Government of the day. His duties are performed under delegation by an Assistant Paymaster-General appointed by the First Lord of the Treasury.

The Commissioners of Woods, Forests, and Land Revenues

The land revenues of the Crown in the United Kingdom are under the management of the Commissioners of Crown Lands. They have been collected on the public account since 1760, when King George III surrendered them and received in return an addition to his Civil List. The Minister of Agriculture and Fisheries is *Ex-officio* Commissioner with a Permanent Commissioner and staff.

The Crown Lands Act, 1907, incorporated the Commissioners of Crown Lands. It amended the law relating to the powers and duties of the Commissioners in respect of the possessions and revenues of the Crown under their management. The Act enables the Commissioners to sell and let on lease, Crown lands, including any right or privilege therein.

The Public Works Loan Board

The Public Works Loan Board was created in 1817 for the purpose of advancing money out of sums placed at their disposal by the State to local authorities for public works. It was constituted in its present form by the Public Works Loans Act, 1875. It is a body of eighteen unpaid Commissioners, chiefly eminent merchants and bankers, appointed every five years. The Board lends also to " public utility societies," and to individual landowners for permanent improvements to estates. The amount at the disposal of the Commissioners is authorized annually under a Public Works Loans Act, and is voted out of the Local Loans Fund. This Fund is raised by the issue of Local Loan Stock supplemented by (1) loans of £20,000,000 out of the Consolidated Loans Fund for land settlement advances; (2) half proceeds of National Savings Certificates. Advances are limited to local authorities having a rateable value not exceeding £200,000, except in case of national savings loans, small holdings and land settlement and certain county council purposes. The borrowers are charged interest at a rate fixed from time to time by Treasury Minute. As well as interest, fees on an *ad valorem* basis, stamp duties, and expenses are charged. Loans are repaid, usually on the annuity system of principal and interest, over various periods.

Royal Mint

The Royal Mint, as now constituted, may be said to date from 1817. It is situated at Tower Hill, London. Here the coin of the realm is produced under the control of the Deputy Master and Comptroller of the Mint. The Coinage Act, 1870, abolished the ancient post of Master of the Mint as such, and combined it with that of the Chancellor of the Exchequer, who is *ex-officio* Master, Worker, and Warden of the Mint. Negotiations between the Royal Mint and the public are conducted through the Bank of England.

Currency and Bank-notes

The Currency and Bank-notes Act, 1928, amalgamates the Treasury currency note with the Bank of England note. The Act is designed to regularize credit, and places the legal responsibility for note issues upon the Bank of England subject to the

basic principles that convertibility into gold must be sustained and that there must be flexibility. This is provided for by enabling variations in the fiduciary issue, upwards and downwards, by the Treasury on being requested by the Bank. The profits of note issues pass to the Treasury.

In this connection it is important to recall that this country went off the Gold Standard in 1931.

CHAPTER XXXV

THE METHODS OF RAISING THE NECESSARY REVENUE

As explained in Chapter XXXIII, the Public Expenditure may be classed under two heads, viz.—

(1) CONSOLIDATED FUND SERVICES, or sums the payment of which from the Consolidated Fund has been already authorized by Acts of Parliament, and which are issued at the proper time without the annual intervention of Parliament.

(2) SUPPLY SERVICES, which are the numerous items brought forward every year in Committee of Supply by Ministers of the Crown.

Consolidated Fund Services

Under this head are included the charges for interest and management of the National Debt, the Civil List, and Annuities to the Royal Family, and many salaries and pensions which are included under "Other Consolidated Fund Services." (For details see page 236.)

Supply Services

The sums necessary to defray the charges for the Army, Navy, Air Force, Civil Services, Customs, Post Office, etc., are voted annually by the House of Commons in Committee of Supply. (For details see page 236.) The sums required are granted for the financial year ending on 31st March, although the Treasury year ends on the 5th April. This is due to the following cause—

Until 1751 the year began on Lady Day (25th March). Then Parliament enacted that the year should begin on the 1st of January, 1752 (24 George II, 1751, c. 23). At the same time the Julian Calendar was abolished, and the Gregorian took its place. Eleven days were deleted, but, as the Treasury officials had arranged for their Budget a year of 365 days, they could not conveniently arrange for a smaller number, so the Treasury year finishes 5th April. The discrepancy between the Julian and Gregorian Calendars in the eighteenth century was eleven days, in the nineteenth twelve days, and from 1900 thirteen days. This discrepancy will continue until the 28th March, 2100, new style, unless the Eastern Church alters its calendar.

Votes on account are, however, granted early in the session for parts of the year, but the whole sum voted during the session for any service is for the exact period of twelve months.

This subject has been very clearly summarized by Sir Erskine May in the following words—

"The Crown, acting with the advice of its responsible ministers being the executive power, is charged with the management of all revenues of the country and of all the payments for the public services. The Crown, therefore, in the first instance, makes known to the Commons the pecuniary interests of the Government and the Commons grant such aids of supplies as are required to satisfy these demands and provide by taxes and by the appropriation of other sources of the public income the Ways and Means to meet the supplies which are granted to them. Thus, the Crown demands money, the Commons grant it, and the Lords assent to the grant. But the Commons do not vote money unless it be required by the Crown, nor impose, nor augment taxes unless the taxation be necessary for the public services as declared by the Crown through its constitutional advisers."

Estimates

The first step is the preparation by the whole of the Spending Departments and Revenue Departments of estimates of payments and receipts. In October of each year the Treasury issues a Circular to the Departments requesting the preparation of Estimates for presentation to Parliament at the beginning of the new Parliamentary Session to cover receipts and payments of the following financial year, commencing the next 1st of April. Thus, for example, the estimated receipts and payments of the year commencing 1st April, 1935, would be prepared in October, 1934.

These Estimates are prepared by the permanent heads of departments, laid before the respective political chiefs, and are then submitted to the Treasury. At the Treasury there is a Departmental Votes Clerk, *i.e.*, a first-class official assigned to one or more departments, who is responsible for the vote say, of the Board of Education. He goes through the estimates and, after consultation with the department concerned, they are submitted to the Financial Secretary to the Treasury. The Votes Clerk and the Financial Secretary usually discuss the Votes and, if they are unable to agree, consultations are held with the political heads of the departments involved. If they cannot come to an understanding, the matter is referred to the Chancellor of the Exchequer. In the event of further disagreement, the matter would probably be referred ultimately to the Prime Minister for his decision. From the Treasury the Estimates are forwarded to the Cabinet, where the principles involved are discussed. Disapproval by the Cabinet as a whole of the Estimates of any department would probably result in the resignation of the political head of that department

as responsible for its policy. These Estimates form the figures for the future Budget. This procedure applies to all the departments with the exception of the Fighting Forces—the Navy, the Army, and the Air Services—which possess Financial Departments of their own which prepare figures independently of the Treasury. The Estimates are laid upon the table soon after the commencement of each session.

Supplementary Estimates

Provision to meet any items which subsequently may be found insufficient, or any unforeseen charges, is made in Supplementary Estimates. Supplementary Estimates may be presented at any time, but the Treasury usually present a batch in June or July before the close of Committee of Supply.

Excess Estimates

Excess Estimates are necessary where a Department has exceeded the original estimate, and the fact is not discovered until after the close of the financial year. Such Estimates require the approval of the Public Accounts Committee as well as the Committee of Supply.

Grants-in-Aid

Grants-in-Aid are sums given by Parliament for certain objects but are not given by means of ordinary votes. When the House of Commons votes money in the ordinary way it will itself control the expenditure through the Appropriation Act and through the audit of accounts Grants-in-aid are given to help some service which Parliament thinks worthy of help, but the actual spending of the money is handed over to the Department concerned, without its having to account to the House. There is not even an audit, unless the grant is specially subjected to audit, and any balance unspent can be retained by the Department concerned. Lastly, a Grant-in-Aid is given once and for all and not sanctioned annually. Examples of such grants are those given to the British Museum.

They must be distinguished from Grants-in-Aid to Local Authorities under the Local Government Act, 1929, and other enactments.

Appropriations-in-Aid

Consist of revenues of a Department not actually paid into the Consolidated Fund as is all revenue normally. These Appropriations-in-Aid were legalized by the Public Accounts and Charges Act, 1891, and it is left to the Treasury to decide whether revenue coming into any Department shall be treated as an Appropriation-in-Aid or paid into the Consolidated Fund. If it is treated as an

Appropriation-in-Aid, it is deducted from the estimated expenditure for the following year so that the actual vote asked for is the Gross Estimate less the Appropriation-in-Aid which can never be moved, but gross expenditure can be and often is criticized A Department can never spend more than this gross sum even if Appropriations-in-Aid are larger than was thought at the time the estimate was presented.

Committee of Supply

In 1678 the House of Commons passed the following resolution: "That all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons, and all bills for the granting of such aids and supplies ought to begin with the Commons, and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants which ought not to be changed or altered by the House of Lords."

A Standing Order adopted in 1707 provided that the House will not proceed upon any petition or motion for granting money, except in Committee of the Whole House.

A Standing Order adopted in 1713 provides that the House will not receive any petition or proceed upon any motion for a grant or charge, whether payable out of the Consolidated Fund or out of moneys to be provided by Parliament, unless recommended from the Crown, *i.e.*, moved by a Minister. This has been held to cover any amendment for increasing a grant or altering its destination.

Early in the session, which normally opens in February, the House resolves itself into Committee of the Whole House on Supply. Certain charges are payable by statute out of the Consolidated Fund, and therefore do not require an annual vote. The rest of the Estimates for the coming financial year are submitted to the Committee of Supply by the heads of the respective departments for the approval of the House sitting in Committee under the chairmanship of the Chairman of Committees.

Committee of Supply is the one season of the year when Parliament has a serious opportunity of reviewing the work of the executive. Usually, only one or two votes out of many hundreds are discussed at all. If the House disapproves of the Estimates submitted to them in Committee of Supply, it is virtually a vote of want of confidence in the Government, who would be forced to resign. Under Standing Order of the House, these departmental votes in Committee of Supply must be completed before the 5th of August. Discussions on Supply are of a conversational order, and the same member may speak more than once.

To meet deficiencies in supplies, the Treasury is authorized to advance, as occasion demands, for public and colonial services out of the TREASURY CHEST FUND £1,300,000, and out of the CIVIL CONTINGENCIES FUND £120,000 for civil services. The latter was increased to £300,000 by a Supplementary Estimate in 1913. Such advances must be repaid out of the Parliamentary votes of the ensuing year.

Before 1st April there must be passed the Consolidated Fund (No. 1) Act. It is an Act to supply certain sums out of the Consolidated Fund to the service of the year ending 31st March of that year, and on account of the supplies for the succeeding twelve months.

Votes of Credit for Army, Naval, and Air Force expenditure of an urgent character are also voted in Committee of Supply. On the resolution embodying the vote for the number of men for the Army and Air Force respectively is founded the Army and Air Force (Annual) Bill, which provides, during twelve months and no more, for the discipline and regulation of those forces. The system of granting supplies for only twelve months involves a meeting of Parliament every year, and provides a safeguard against the permanence of the Army and Air Force establishments, and a means of continuing them periodically in such strength as the House itself may deem to be necessary.

Committee of Ways and Means

The process of getting money into the Consolidated Fund goes on at the same time as the votes in Supply, but independently. From the Estimates supplied, the Chancellor of the Exchequer prepares his Budget, which he opens in the Committee of the Whole House on Ways and Means as soon after the 5th April as possible. The Committee is presided over by the Chairman of Ways and Means, who is Deputy Speaker.

The Budget

The Budget is a copy of the statement of revenue and expenditure as laid before the House of Commons by the Chancellor of the Exchequer when opening the Budget

The term "Budget" was first applied in England to the annual financial statement about 1760. It is said to be derived from the French *Bougette*, the bag in which the Minister carried the papers and accounts necessary for his statement. As a rule the Chancellor of the Exchequer discloses to a Budget Cabinet Meeting his proposals for the Budget. This is usually four or five days before the Budget Speech. At such meeting only the Secretary to the Cabinet is present and the statement is oral and no memorandum made. In his speech to the House of Commons with which the

Chancellor of the Exchequer opens his Budget, he reviews the financial position for the past financial year, indicating where the Estimates of receipts and payments have fallen short of or exceeded the Budget of the previous twelve months. If there is a surplus, he makes suggestions for the relief of existing taxation, or for its disposal If there is an estimated deficiency, he outlines his proposals for new taxation to meet the deficiency. The Government has the exclusive right to propose fresh taxes, and no private member can move to augment taxes. The Chancellor of the Exchequer completes his speech by moving a resolution for the imposition of taxes for the current financial year, and any alterations or additions and regulations respecting the National Debt are incorporated.

The Finance Act

The proposals of the Chancellor of the Exchequer, as amended, are subsequently incorporated in the Finance Act of that year. The name Customs and Inland Revenue Act was changed to Finance Act in 1894, when Death Duties were included in it. In 1899 the provisions of the Sinking Fund were included for the first time.

The Preamble to the Finance Act is as follows:

" We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned ; and do therefore most humbly beseech Your Majesty that it be enacted, and be it enacted . . . etc." This should be contrasted with the Preamble to a Public General Act of Parliament quoted on page 58.

Any disagreement on the part of the House with the proposals of the Chancellor of the Exchequer need not necessarily lead to his resignation or the fall of the Government, for when the House has approved of the necessity for the expenditure of the money, the method adopted to raise such sums is usually merely a question of detail and not of principle. The resolutions in Committee of Ways and Means are reported to the House, and a discussion ensues on the Report Stage. After Supply is finished comes the Appropriation Bill, which is dealt with in the next Chapter.

The Provisional Collection of Taxes Act, 1913

In *Bowles* v. *Attorney-General* (1913), Mr. Justice Parker held that a resolution of either House in the absence of statutory authority

to that effect does not legalize the collection of a tax; or, in other words, the decision in *Stockdale v. Hansard*, that a resolution of either House cannot alter the law of the land was upheld. Consequently, the Provisional Collection of Taxes Act, 1913, was passed.

This Act, commonly known as the Gibson Bowles Act, provides that—

Where a resolution is passed by the Committee of Ways and Means providing

(i) for the variation of any existing tax, or

(ii) for the renewal of any tax in force; and

(iii) the resolution contains a declaration that it is expedient in the public interest that the resolution shall have statutory effect,

the resolution shall for a limited period have statutory effect as if contained in an Act of Parliament.

And, where the resolution provides for the renewal of a tax, all enactments which were in force with reference to the tax as last imposed by Act of Parliament shall during the said period have full force.

Thus, for example, Income Tax is payable for the Financial Year ending the 5th April following, although the approval of the House of Commons may not have been made, say, until towards the close of the Parliamentary Session.

Import Duties Act, 1932

(*a*) Customs duties are earlier in origin than Excise duties. Adam Smith, in his *Wealth of Nations*, lays it down that the term "customs" was derived from a customary payment made by merchants which had been in use from time immemorial. They appear to have been originally considered as taxes upon the profits of merchants. Therefore the term "Customs" is an abbreviation of "Customary Payments."

Up to 1700 Customs duties in England were for revenue purposes, and were approximately 5 per cent on imports and exports. The period 1700 to 1825 was a period of high protection except during the peace years when Walpole was in power. From 1825 commenced the period which is noteworthy for the large reduction in the number of articles on the tariff lists and for the policy of Free Trade. The number of articles ultimately fell to about twenty-four. Customs duties constituted about 20 per cent of the revenue of Great Britain from taxation.

(*b*) There were four problems of policy involved—

(1) Unfair foreign competition.

(2) The difficulty of commercial negotiations.
(3) Foreign interference with the Empire.
(4) Reciprocity with the Dominions.

(*c*) The need for Inquiry originated at the Colonial Conference, 1902, by the series of resolutions. Subsequently, the Right Hon. Joseph Chamberlain, in a speech to his constituents of West Birmingham on 15th May, 1903, opened the Tariff Reform campaign. The subsequent period involved considerable political controversy.

(*d*) Protective Import Duties prior to 1932 may be divided into four categories—

(i) The new Import Duties of September, 1915, popularly known as the McKenna Duties with recent additions.

(ii) The Key Industry Duties imposed by the Safeguarding of Industries Act, 1921, and re-imposed and added to in the Finance Act 1926.

The Board of Trade Committee which reported in April, 1936, recommended that the duties should be renewed in their present form for a further period of ten years at not less than their present rates.

(iii) Safeguarding Duties imposed by Parliament in accordance with the recommendation of Safeguarding Committees.

(iv) Duties on hops, silk, and artificial silk, imposed by Finance Act, 1925.

(*e*) The World Economic Conference at Geneva, in May, 1927, attended by 157 experts from 50 nations, resolved that this "Conference declares that the time has come to put an end to the increase in tariffs and to move in the opposite direction."

(*f*) The slump of 1929 was followed by the events which led up to the crisis of 1931, which resulted in the fall of the Labour Government.

(*g*) Subsequently to the return to office of the National Government, 1931, there were passed, in November, 1931, the Abnormal Importation (Customs Duties) Act, 1931, and the Horticultural Produce Act, 1931.

(*h*) The Import Duties Act, 1932, had for its objects—

(1) The correction of the balance of trade;
(2) The raising of revenue without imposing undue burdens on any section of the community;
(3) Modern and scientific protection to transfer production to our own fields and factories;
(4) Encouragement of industrial efficiency;
(5) Promotion of tariff agreements with discrimination;
(6) Retaliation against foreign tariff discrimination;
(7) Advancement of Imperial economic partnership.

The Act authorized as from 1st March, 1932—

(i) An *ad valorem* duty of 10 per cent on all imports with certain exceptions;

(ii) Additional duties on non-essential imports to be imposed by the Treasury on the recommendation of an independent Tariff Advisory Committee of from three to five members;

(iii) Duties up to 100 per cent on goods from countries which discriminate against British goods to be imposed by the Board of Trade.

Inquiry into the working of the Act by the Board of Trade was provided for in the Act. The results are now becoming available, and Parts of the report have been published.

THE DYESTUFFS (IMPORT REGULATION) ACT, 1934, amends the Dyestuffs (Import Regulation) Act, 1920.

THE IMPORTS DUTIES (GENERAL) ORDER, 1935, consolidates, with minor amendments, the duties additional to the general *ad valorem* duty or Ottawa duty, together with the substituted general *ad valorem* duties and the reduced general *ad valorem* duties.

CHAPTER XXXVI

THE CONTROL OF NATIONAL FINANCE

DETAILS of the national revenue and expenditure are furnished in three annual summaries published by H.M. Stationery Office—

(1) *The Financial Statement,* which is an estimate of revenue and expenditure laid before the House of Commons by the Chancellor of the Exchequer when opening the Budget;

(2) *The Account of Public Income and Expenditure,* which is issued at about the same time and shows the amounts collected and spent in the preceding financial year, and the amount of the Old Sinking Fund, if any;

(3) *The Finance Accounts,* which are available in the summer and set out in considerable detail the main heads of revenue and expenditure of the preceding year, and also show particulars of the National Debt transactions of the year, and the total debt remaining outstanding.

There are three general principles involved, viz.—

(1) No money can be obtained or spent save under authority of Parliament, and no money obtained can be spent except for the purpose to which Parliament has appropriated it.

(2) All money obtained must be paid into the Consolidated Fund, and all payments made out of that Fund.

(3) Expenditure for the year must be met out of Revenue for the year.

All the national revenues, except appropriations-in-aid, are first paid into the Consolidated Fund at the Bank of England, and are then drawn out to meet the expenditure of the Government. The financial work of Parliament is to get money in and out of that Fund. The second process comes first in order of Parliamentary business, and its nature is fixed by the two Standing Orders adopted in 1707 and 1713, respectively, which are referred to on page 249.

Appropriation Act

At the close of the Parliamentary Session there is passed the Appropriation Act, for the purpose of appropriating supplies to the various services granted in the current session. This was first introduced in 1688, and is a very valuable means of providing that the sums granted in Parliament for specific purposes are so

used, for all the details of the votes are set out in schedules to the Act. Without the Appropriation Act, the various departments could manipulate the funds to suit themselves, as long as they did not exceed the sums granted in Committee of Supply. In this way they could defeat the policy of that Committee, viz., that the House of Commons should control finance.

Comptroller and Auditor-General

Treasury control and Parliamentary control (so far as embodied in supply grants as distinguished from ways and means) are both enforced by a system of audit, and in the last resort the scope of either form of control depends on the instructions given to the auditors. These instructions form an important part of the subject-matter of the Exchequer and Audit Departments Act, 1866, under which this official was first appointed. He replaced the Comptroller-General of the Exchequer and the Commissioners for auditing the Public Accounts.

The Comptroller and Auditor-General is appointed by Royal Letters Patent and holds a non-political office during good behaviour. He is answerable to no minister and can be removed only by the Crown after addresses have been passed by both Houses of Parliament. He has the right of direct access to the House of Commons, and his salary is charged on the Consolidated Fund.

The main functions of the office are—

(1) *In regard to the Exchequer.* The examination of the daily accounts of revenue and other public moneys paid into the Banks of England and Ireland to the Accounts of His Majesty's Exchequer ; the examination of the quarterly accounts of the Income and Charge of the Consolidated Fund in order that the banks may be authorized to make advances in the case of any deficiency ; and also the grant of credits for Issues from the Exchequer not exceeding the amounts sanctioned by Parliament.

(2) *In regard to the Audit of the Public Accounts of the United Kingdom.* To ascertain that money expended has been applied to the purposes for which the grant of Parliament was intended to provide ; that the expenditure is supported by proof of payment, and generally to verify the correctness of the accounts and to report to Parliament thereon. The audit extends to Stores Accounts.

In the case of the Supply Services, a Royal Order for the amounts appropriated by Parliament is made under the King's sign manual, counter-signed by two of the Commissioners or Lords of the Treasury. The Orders referred to authorize the

Comptroller and Auditor-General to grant to the Paymaster-General credits at the Bank of England. The Treasury then requires the Comptroller and Auditor-General to grant credit at the Bank of England and Ireland for these amounts. If satisfied that the authority from Parliament is complete, he makes an order on the banks granting the credit. From time to time the Treasury requests the banks to transfer to the various supply accounts for disbursement, sums of money not exceeding the credits so granted. During the session the Comptroller and Auditor-General makes his report to the Committee of Public Accounts.

Accounting Officer

A special officer is responsible in each Department for the accounting of each Sub-head of each vote in the Estimates. The officer nominated for this purpose by the Treasury is called the Accounting Officer. He is usually the permanent head of the Department which administers the Vote, and he has to render the Appropriation Accounts to the Comptroller and Auditor-General. He is responsible to the Minister in charge of his Department that no money is spent in any way contrary to that authorized by Parliament. The Accounting Officer is the channel through which payments are made and he is also the medium for the collection of revenue by his Department.

Appropriation Accounts

The actual cost of Supply Services as distinct from the estimated cost, is to be found in the Appropriation Accounts which are issued in the same five categories as the Estimates, and include the Report of the Comptroller and Auditor-General on each account.

Committee of Public Accounts

This Committee of the House of Commons is set up early in the session, for "the examination of the accounts showing the appropriations of the sum granted by Parliament to meet public expenditure." It was first appointed in 1862, and consisted of nine members, increased in 1870 to eleven members, drawn from all parties in the House. At present it consists of fifteen members, five of whom form a quorum. The practice is to select a member of the Opposition as chairman and to include the Financial Secretary to the Treasury as one of its members.

This Committee inspects the accounts and the reports of the Comptroller and Auditor-General of the reason why more or less than the estimate was spent on each item. The Committee of

Public Accounts has undoubtedly great influence in keeping the expenditure very strictly within the appropriations. Mr. Gladstone described it as, "An institution well founded on the principles of Parliamentary government; it being intended to give completeness to our system of Parliamentary control over public moneys and as affording through its investigations the best security for the due, speedy and effectual examining and rendering of the Public Accounts."

Custom has reserved to the Public Accounts Committee the ultimate decision whether a payment is to be regarded as wrong or not. The Committee may condone a payment challenged by the auditors. Sometimes it condemns a payment which the auditor has passed subject to some tentative criticisms.

The chart on page 259 is an attempt to visualize the Control of our National Finance.

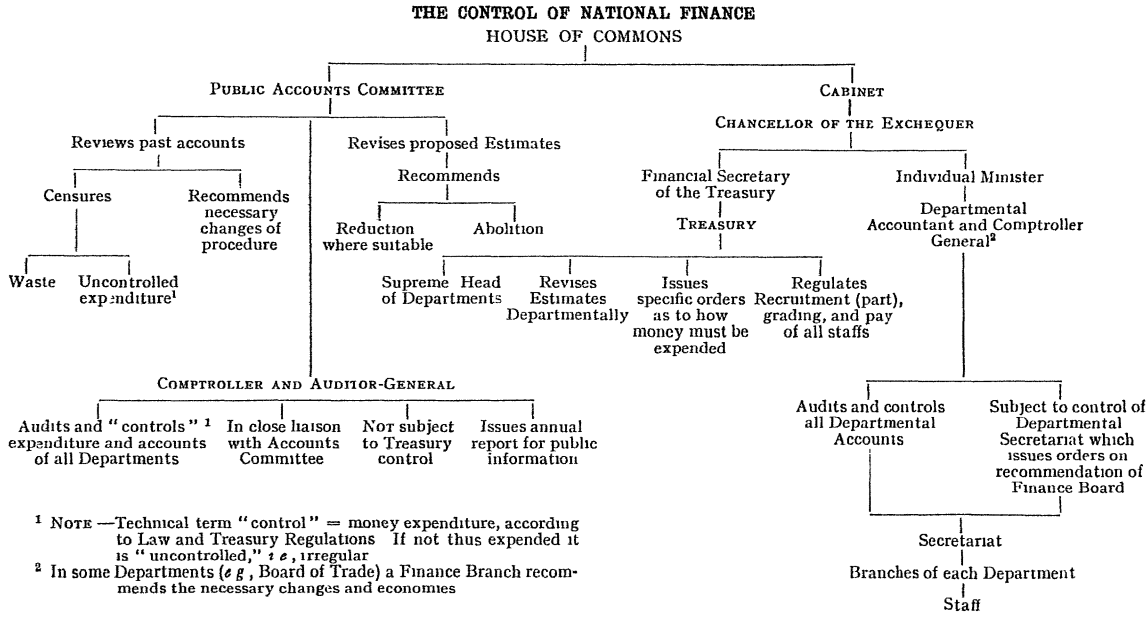
Economy

Economy is not the special mission of the House of Commons. It is only one of the many public interests that the House has to take into consideration. But from time to time, when the country is in financial difficulties, economy rises into a predominant position and temporarily claims the first place. The constitutional method of proceeding is then to put into office a Government which reflects the desires of the House. The Government must choose which service to cut down, and its organ for making the selection will be the Chancellor of the Exchequer and his department, the Treasury. Here begin the difficulties. There may be an overwhelming majority of members of Parliament in favour of cutting down expenditure, but there yet may be no one item of expenditure for the reduction of which a majority can be found.

Select Committee of National Expenditure

In February, 1918, a Select Committee, consisting of twenty-six members, representative of all parties, was appointed to examine current National Expenditure, to report on practicable economies, and to make recommendations with a view to securing more effective Parliamentary control over Public Expenditure. This Committee has issued a number of illuminating reports. Following these reports came the famous Fourth Report of the Committee of Public Accounts, issued on the 15th December, 1920. In the course of this Report the Committee said—

"The imperative necessity for securing economy in every department of public (as, indeed, of private) life, if national bankruptcy is to be avoided, is not yet sufficiently recognized."



[1] NOTE —Technical term "control" = money expenditure, according to Law and Treasury Regulations If not thus expended it is "uncontrolled," *i e*, irregular

[2] In some Departments (*e g*, Board of Trade) a Finance Branch recommends the necessary changes and economies

Nothing will accomplish it but a return to the almost forgotten tradition established by Mr. Gladstone and carried on by Sir Michael Hicks-Beach, under whom the financial policy of the state was : " By saving numerous pence to spend effective pounds."

" It seems to us essential," says the Committee, " that the heads of departments should work together as a team in the pursuit of economy in every branch and every detail in the public service.

" There has increasingly grown up a feeling that small expenses do not matter, and it is an almost necessary sign of vitality in a public department, and particularly in a new department, that it shall constantly throw off buds of fresh expenditure which rapidly grow into shoots and branches.

" We are no longer a nation with a wide margin of taxable capacity ; this margin indeed no longer exists. We shall, therefore, as a nation (as will each member of it) very frequently have to say that, however justifiable, and indeed desirable, any proposed expenditure may be, we simply cannot afford it.

" We think it right to fix upon high officials a special responsibility for vigilance and care in spending public funds."

Select Committee on Financial Incidence of Future Legislation

The Select Committee of the House of Commons, appointed to consider whether any, and if so, what alteration is necessary in connection with the financial incidence of future legislation, met for the first time at the House of Commons on the 7th December, 1920. At the present time, any Bill which is a Money Bill, or which has any clause in it which involves expenditure of public money, has to have direct sanction by means of a special resolution passed by the Committee of Ways and Means (*i.e.*, the whole House), which passes or rejects it as thought fit.

The object of the Committee was to ascertain by what procedure expenditure involved by Bills, either certain or potential, can be estimated before the Bills are publicly debated in the House, so that criticism may not be of a general character and " in the air," but be directed to knowledge previously ascertained of what is involved.

This Report does not appear to have carried very much influence, but Mr. Austen Chamberlain, when Chancellor of the Exchequer, promised a Select Committee on Estimates. This Select Committee was to consist of eighteen members, to examine such of the Estimates presented to the House as may seem fit to the Committee, and to report what, if any, economies consistent with the policy implied in these Estimates may be effected, the Committee to be given power, if they so determine, to sit as

two Committees, and in that event to apportion the subject referred to the Committee between the two Committees, each of which shall have the full powers of the undivided Committee.

Committee on National Expenditure, 1921

In August, 1921, the " Business Committee," now known as the Geddes Committee, was appointed. This Committee consisted of Sir Eric Geddes, M.P. (Chairman), Lord Inchcape, Lord Faringdon, Sir Joseph Maclay, and Sir Guy Granet.

The terms of reference were—

" To make recommendations to the Chancellor of the Exchequer for effecting forthwith all possible reductions in national expenditure on Supply Services, having regard especially to the present and prospective positions of the revenue.

" In so far as questions of policy are involved, these will remain for the exclusive consideration of the Cabinet. But it will be open to the Committee to review expenditure and to indicate economies which may be effected if particular policies are either adopted, abandoned, or modified."

The Treasury organization was employed in the ordinary course for the purpose of the Committee's work, and some other members of the Civil Service were seconded for the service. The Committee was furnished with all information requisite to perform its task, but did not take formal evidence. The Committee sat at the Treasury and reported to the Chancellor of the Exchequer.

The First and Second Interim Reports were issued on the 10th February, 1922, in the form of Blue Books (Cmd 1581 and 1582), price 4s. and 3s. respectively. The Third and Final Report was issued on the 24th February, 1922 (Cmd. 1589), price 4s.

The First Interim Report is divided into two parts. Part I discusses the Fighting Services Part II is concerned with the expenditure included in the Estimates of the Board of Education, the Ministry of Health, the Ministry of Labour, and with Old Age Pensions.

The Second Interim Report deals with a number of departments in groups, not selected, the Committee points out, on account of the large amount of money involved, but because of administrative urgency and convenience. These groups are—

TRADE SERVICES GROUP. Board of Trade, Department of Overseas Trade, Export Credits Scheme, Mercantile Marine Services, Mines Department, Ministry of Transport.

AGRICULTURAL SERVICES GROUP. Ministry of Agriculture and Fisheries, Board of Agriculture (Scotland), Fishery Board (Scotland), Ordnance Survey, Forestry Commission.

POLICE AND PRISONS GROUP. Police, Prisons, Reformatory and Industrial Schools, Board of Control.

GENERAL GROUP comprising 24 votes.

The Third and Final Report deals with 60 votes, including—(1) Colonial Office, Colonial Services, and Middle East Group; (2) Legal Services Group; (3) Revenue Departments Group; (4) Houses of Parliament and certain Civil Departments Group, (5) Office of Works and Public Works and Building Group; (6) Art and Science Group; (7) Foreign Office, Diplomatic, and Consular Services Group; (8) Stationery Office and Registrar-General Group; (9) Miscellaneous Group; (10) Aftermath of the War Services Group.

These Reports should be considered at greater length. It is important, however, to remember that the appointment of such a Committee and its ultimate Reports to the Chancellor of the Exchequer constitute probably an important departure from constitutional procedure. It has been observed above that power to examine accounts has been vested in the Public Accounts Committee of the House of Commons for many years. This Committee has urged in recent years various economies which have not been acted upon. It was left, however, to another Committee, appointed outside the membership of the House of Commons, except so far as the Chairman was concerned, to replace the House of Commons as the constitutional controller of the public purse. On the other hand, it is doubtful whether the Departments of the State would have been as responsive to the recommendations of a Parliamentary Committee at a time when drastic economy in expenditure was a national necessity.

Committee on National Expenditure, 1931

In August, 1931, there was issued the Report of the Committee on National Expenditure (Cmd. 3920), which was presided over by Sir George Ernest May.

(1) The Committee estimated a Budget deficiency of £120,000,000.

(2) The Committee made many recommendations by which they expected £96,500,000 would be saved, including—

(*a*)	Unemployment Insurance	£66,500,000
(*b*)	Education—reduction of Grants and Salaries .	£13,600,000
(*c*)	Lower grants to Universities and Colleges .	£250,000
(*d*)	The Road Fund	£7,800,000
(*e*)	Health Insurance	£1,000,000
(*f*)	The Fighting Services and Police . .	£3,525,000
(*g*)	Abolition of Empire Marketing Board . .	£400,000
(*h*)	Reduction of licences paid to B.B.C. . .	£475,000

On 24th August, 1931, the Labour Government fell, and the same day a National Government was formed, with the Right Hon J Ramsay MacDonald, M P., as Prime Minister, pledged to carry out the necessary economies.

Report of the Estimates Committee, 1932

The Estimates Committee of the House of Commons presented its second Report on 27th June, 1932. The Report reviews the progress of economies, the Road Fund, and they agree with the May Committee that it should be abolished. The last part of the Report is devoted to an examination of the existing system of sanction for loans raised by local authorities.

The effect of such loan expenditure on the estimates of Government Departments is also reviewed. The Committee explain how the duty of sanctioning borrowing by local authorities has been gradually concentrated in the Ministry of Health, and relate how that Department carries out its work. An appendix attached to the Report reveals the fact that the total outstanding loan debt of local authorities was then £1,300,000,000.

In the years immediately preceding the crisis in the Autumn, 1931, borrowing by local authorities was taking place at an average rate of over £100,000,000 a year. The net outstanding loan debt was increased at the rate of approximately £56,000,000 a year. As much of this expenditure automatically attracts Exchequer grants to itself without the specific sanction either of the Treasury or the House of Commons, the Committee regard this state of affairs as unsound. They, therefore, proceed to consider the possibilities of more effective central control.

After reviewing the course of events which precede the actual borrowing of money for services aided by the Exchequer grants, the Committee point out that the stage at which the State is really committed to expenditure in future years is when a department is asked to sanction a scheme submitted by a local authority.

The Committee, therefore, recommend that the responsible Departments should be invited in future to submit, for prior Treasury sanction, an annual programme of their proposals. The Committee suggest that the amount to be sanctioned by the Treasury for each Department concerned should be an aggregate figure. This proposal would apply to housing loans, loans for schools, for roads, and for small holdings. By this means, and by their proposals in regard to the Road Fund, the Committee hope to restore some of that central control over public expenditure which is so essential to economy.

In the House of Commons on 11th July, 1932, the Chancellor of the Exchequer stated that in the last eight years the indebtedness of local authorities had increased by something like

£400,000,000. A large part of the immense loan debt was represented by productive assets, by trading services, and therefore must not be taken as a sort of dead-weight debt.

Control of Expenditure

The Report of the Select Committee on Reform of Parliamentary Procedure (*see also* Chapter XI) which was issued in November, 1932, dealt, *inter alia*, with the more effective control of public expenditure.

With regard to *Financial Control*, the Committee point out that the various attempts to make the Estimates Committee an effective instrument for the control of public expenditure had failed.

The Committee make it their first recommendation that the *Estimates Committee* should be enlarged, and that a close working arrangement should be established between that Committee and the Public Accounts Committee.

They think it should be within the competence of the Estimates Committee to take into consideration matters of policy as well as detail, and that it should be one of their duties regularly to survey the relation of the total public expenditure to the national income. It is considered that the Estimates Committee ought to be provided with an official adviser, similar to the Public Accounts Committee, and an independent technical staff adequate for their function.

"Your Committee," it is added, "have also considered the question of the lack of opportunity under present Standing Orders for an adequate discussion of the reports of the Public Accounts and Estimates Committees, and they recommend that at least three of the allotted Supply days should be set aside for a definite consideration by the House of the Reports from the committees, whether they cover the whole or any part of the annual estimates and accounts."

CHAPTER XXXVII

NATIONAL INDEBTEDNESS

THE State—unlike local authorities—meets all expenditure normally out of revenue.

In a national emergency, such as a costly war, the various items of revenue will not suffice to meet the annual expenditure, and it becomes necessary to borrow.

There are certain social reforms, such as the Emancipation of the Slaves in 1836, which have resulted in additions to the National Debt.

Certain capital expenditures, which it is hoped will prove remunerative, *e.g.*, the purchase of the undertaking of the National Telephone Company, Limited, have been met by the increase of the National Debt.

NATIONAL DEBTS may be considered in the following connections—

(1) Historical—hoarding systems. Formerly states accumulated treasure as a provision for contingencies.

(2) National Debts—a mortgage upon the wealth and industry of a nation secured upon its taxes and future revenue.

(3) The product of wars and increased by wars.

National Debts are also divided into two types—

(*a*) Funded Debt, *i.e.*, permanent debt which the Government is under no obligation to pay off at any fixed time.

(*b*) Unfunded or Floating Debt consists of borrowing for short periods, which must be paid off at specified dates. These consist of—

(i) Treasury Bills.
(ii) Deficiency Advances under the Exchequer and Audit Departments Act, 1866.
(iii) Ways and Means Advances from the Bank of England.
(iv) Advances by Government Departments.
(v) National Savings Certificates.
(vi) Currency Notes under the Currency and Bank Notes Acts, 1914 and 1928. (*See* page 244.)

Loans may be forced or voluntary. Forced loans are those which are raised by a compulsory contribution, *e.g.*, issue of inconvertible paper currency.

Public loans may be divided into two classes—

(*a*) Internal. Raised within the State which borrows.

(*b*) External. Raised by public offer in countries other than the borrowing State.

Loans are issued—

(*a*) By a direct appeal for subscriptions.

(*b*) By negotiations through a banker or group of capitalists (usual in foreign loans).

THE BRITISH NATIONAL DEBT is frequently referred to as "the Funds," payment of the interest on which is provided out of the national revenue. It is divided into two classes, viz.: Funded Debt and Unfunded Debt.

FUNDED DEBT is permanent debt, which the Government is under no obligation to pay off at any fixed time. It has been accumulated by borrowing for the prosecution of foreign wars, and has, despite large repayments from time to time, grown from £664,263 in 1688 to its present enormous amount.

National Debt Office

THE NATIONAL DEBT COMMISSIONERS were appointed in 1786 under an Act by which a Permanent Sinking Fund was to be established, and a sum of £250,000 issued quarterly to be applied towards the reduction of the National Debt. This is commonly spoken of as "Mr. Pitt's Sinking Fund." In 1829 this was superseded by what is now called the Old Sinking Fund. The Commissioners are at present the Speaker, the Chancellor of the Exchequer, the Master of the Rolls, the Lord Chief Justice, the Paymaster-General, and the Governor and Deputy-Governor of the Bank of England. The Department is under a Comptroller-General, an Assistant Comptroller, Actuary and staff, together with a firm of Brokers.

LOCAL LOANS. Many works of a permanent character are undertaken by local authorities under powers conferred on them. They are usually authorized to borrow money for the purpose repayable over a period of years.

Permanent debt may not now be created by local authorities, and all loans must be redeemed within the maximum period sanctioned by the Government Department or stated in the local Act of Parliament.

The Public Works Loan Board makes advances to local authorities as explained on page 244.

There are three main ways in which it has been proposed to deal with the enormous National Debt which exists to-day, viz.: first, to repudiate it, which is unworthy of consideration; secondly, to pay it off gradually; and, lastly, to make a levy on capital.

Methods for Reduction of Debt

(*a*) Applying casual surplus revenue.
(*b*) Annual provision of a Sinking Fund—
 (i) Pitt's Sinking Fund of 1786.
 (ii) Assigned revenues, *e.g.*, Death Duties.
 (iii) The New Sinking Fund.
(*c*) Conversion.

CONVERSION. This is a new offer whereby the State make terms attractive enough to induce the majority of holders to accept a lower rate of interest than that being paid on existing loans.

In 1932 the task of converting the 5 per cent War Stock, 1929–1942, into 3½ per cent War Stock was successfully accomplished. In 1933 a new issue of 2½ per cent Conversion Loan, 1944–49, was effected for the purpose of reducing the large amount of Treasury Bills outstanding.

National Saving Certificates. Simultaneously with the announcement of the conversion scheme, the sale of National Savings Certificates was temporarily suspended pending the publication of particulars of a new issue. The purchase price of certificates under the terms of the new issue is retained at 16s.

In April, 1934, the Government issued a 3 per cent Funding Loan 1959–1969 amounting to £150,000,000.

SINKING FUND. The chief method of reducing the Funded Debt exists in the form of Sinking Funds, viz.: (*a*) the Old Sinking Fund, and (*b*) the New Sinking Fund.

The Old Sinking Fund consists of any excess at the end of the financial year of revenue receipts into the Exchequer Account over issues therefrom chargeable against revenue. (*See* page 259.)

The New Sinking Fund, or Fixed Debt Charge, was set up, in 1875, by Sir Stafford Northcote. It consists of the definite sum yearly set aside for the repayment of interest and redemption of the National Debt.

In 1923 this sum was fixed, rising to £50,000,000 in 1925–26 and was increased to £65,000,000 per annum in 1928.

Funded Debt, as applied to foreign loans, means that the issue is charged upon some definite source of revenue, *e.g.*, Lighthouse Dues.

FIXED DEBT CHARGE. The Chancellor of the Exchequer, in opening the Budget on 24th April, 1928, intimated the intention of the Government—

(1) To return to the policy initiated by Sir Stafford Northcote, and to establish a fixed Debt Charge for interest for all the services of the Debt and the Sinking Fund—including National Savings Certificates—of £355,000,000 per annum.

This sum has been amended from time to time and at present stands at £224,000,000.

(2) The object of this system, which was initiated in 1875, and lasted till 1914, is to ensure an ever-increasing rate of amortization as the outstanding debt grows smaller.

(3) If the rate of interest does not fall below 4½ per cent, this sum would be sufficient to extinguish the whole of the internal debt in exactly fifty years.

Unfunded Debt consists of borrowings for short periods, which must be paid off at specified dates. The currency of these short period loans varies from a few months to several years. These loans include Treasury Bills payable at three, six, or twelve months' date, issued by the Treasury and sold by tender, in order to raise funds temporarily for Government purposes. They bear no interest, but are issued at a discount. The Treasury also issue Exchequer Bonds for the same purpose These Bonds are payable to bearer, carry interest at a stated rate, and are payable at fixed dates. The issue of Exchequer Bills has been discontinued, Treasury Bills taking their place.

Types of Securities

Government Securities are normally—

(*a*) Inscribed Stock.
(*b*) Bearer Certificates.
(*c*) Registered Stock.
(*d*) Annuities.
(*e*) National Savings Certificates.

Facilities for the purchase of all these securities are provided by the banks, stock and share brokers, or any British Post Office.

NATIONAL DEBT AND TAXATION

Reports of the Colwyn Committee

This Committee, with Lord Colwyn as Chairman, was appointed in March, 1924, " to consider and report on the National Debt and on the incidence of existing taxation with special reference to their effect on the trade, industry, employment and national credit." The Committee devoted nearly three years to its deliberations, and in 1927 issued a Majority Report, signed by the Chairman and seven other members, and a Minority Report, signed by Messrs. Bowen and Lees-Smith, Mrs. Barbara Wootton, and Professor Hall, the last-named adding a lengthy note of reservation.

The Majority consider that—

(i) If the worker's average standard of living differs from that of 1914, it is probably rather higher than lower. In some

industries large numbers have secured an improved standard, in others very many have suffered a reduction.

(ii) While nominal savings have increased, real savings have declined. The estimated fall of from £150,000,000 to £200,000,000 in national savings is regarded as a matter for anxiety though not for pessimism.

(iii) With regard to income tax, the tax, with unimportant exceptions, does not pass directly into the price of commodities and does not tend to reduce appreciably the power of the public to purchase consumable goods.

(iv) The effect of the estate duty on saving is more damaging than that of the income tax.

(v) The stamp duty is one of the least satisfactory elements in the system of taxation.

(vi) Generally, post-war taxes do not appear to have reduced the working class standard of living below pre-war level, and taxation is not one of the main causes of industrial difficulty.

(vii) On various grounds, a capital levy, unless accepted with more goodwill than could be anticipated at present, would react injuriously on the social and industrial life of the community.

(viii) The present provision of £50,000,000 per annum out of revenue for debt redemption is insufficient and should be raised as soon as possible to £75,000,000, and ultimately to £100,000,000.

The Minority consider that—

(i) The internal debt involves, on balance, a transfer of wealth and income such as aggravates the existing inequality in distribution and tends to increase the proportion of the national income in the hands of non-producers.

(ii) The burdens of taxation on family incomes of £200 and under are heavy and that a considerable part of the wage-earning class is over-taxed.

(iii) Generally in regard to existing direct taxation, it cannot reduce aggregate purchasing power and does not materially reduce the national output of work, saving, or enterprise.

(iv) A sinking fund which will spread repayment over so long a period as 153 years is inadequate.

(v) A capital levy would be the best method of dealing with the debt, provided that it were generally approved and were assured fair treatment by the taxpayers.

(vi) As an alternative, additional taxation to produce £100,000,000 annually be imposed on unearned income.

Sur-Tax

The Capital Levy was gone into very fully by the Colwyn Committee and the proposal was rejected by the Majority but

approved of by the Minority. Both, however, agreed that it was brought forward as a plan to reduce the burden of the National Debt, and for that purpose alone was it discussed. Failing the adoption of the Capital Levy, the Minority Report recommends a Sur-tax upon invested income over £500 a year as an alternative scheme, but still with the object of reducing the debt. One of their strongest arguments against the charges that it would impair the national capital and destroy confidence was that the capital thus taken from one section of the wealthy would be restored to another section of the wealthy, who would use it for investment. Thus, there would be no capital destroyed. They say: " We attach great importance to the point." Further on they say: " The risk of a dangerous diminution of the national capital, which attaches to severe increases of direct taxation of income for other purposes is practically eliminated in the case of taxation for debt redemption."

Trust Funds for National Debt Reduction

There are three such funds, and their totals on the 31st March, 1936, were—

National Fund . . .	£801,005	13	11
John Buchanan Fund . .	4,497	13	4
Elsie Mackay Fund . . .	719,126	18	0

CHAPTER XXXVIII

INTERNATIONAL INDEBTEDNESS

(1) CANCELLATION OF WAR DEBTS.

THE Conference on Reparations, which met at Lausanne in June, 1932, under the chairmanship of the British Prime Minister (The Right Hon. J. Ramsay MacDonald) on 8th July, 1932, arrived at a settlement which is briefly as follows—

(*a*) Reparations are definitely at an end.

(*b*) Germany provides bonds to the value of £150,000,000. These are to be issued not earlier than three years hence at 90, bearing 5 per cent interest, with a sinking fund of 1 per cent.

(*c*) If, after fifteen years from 1932, it has not been found possible to issue the bonds they are to be cancelled.

(*d*) Britain, France, Germany, Italy, and Belgium are to help Austria as a first step towards the reconstruction of Eastern Europe.

(*e*) Bulgarian and Hungarian Reparations payments to be reserved until 15th December, 1932.

(*f*) A world Economic and Financial Conference was to be convened by the League of Nations at a date and place to be fixed, but not necessarily to meet at Geneva. The Governments of the Powers concerned, and of the United States, were invited to appoint members of the preparatory committee of experts, which made a preliminary examination of the problems involved.

The last World Economic Conference was held in 1927.

The so-called "gentleman's agreement" which arises out of this decision provides that the Lausanne Treaty will not be enforced before it has been ratified by all Governments concerned. It also enables each of the five creditors of Germany to prevent ratification by the others until a satisfactory arrangement has been concluded with America on the question of war debts. Moreover, a paragraph in the "transitory clauses concerning Germany" is to the effect that each signatory will be entitled to cancel the whole treaty, after notifying the others that it has made up its mind not to ratify. Meanwhile, until the Lausanne Treaty is put into force all Reparations and other European inter-Governmental payments are suspended.

(2) BRITISH INDEBTEDNESS TO THE UNITED STATES.

The Chancellor of the Exchequer in the House of Commons on the 5th June, 1934, made a statement that the British

Government had decided to suspend payments of War Debts to the United States until it became possible to discuss a settlement of the problem "with a reasonable prospect of agreement." In June, 1935, the British Ambassador at Washington, in reply to the acting United States' Secretary of State, intimated the reasons under which the Government were reluctantly forced to suspend payments are, unfortunately, no less valid now than they were then.

(3) WORLD ECONOMIC CONFERENCE.

In a final important Annexe to the Lausanne Convention of July, 1932, the assembled Powers recommended the calling of a World Conference on economic questions. The United States is invited to nominate a representative to the preparatory committee.

The following questions were to be considered by the World Conference—

(*a*) *Financial Questions.*

(i) Monetary and credit policy.
(ii) Exchange difficulties.
(iii) Level of prices.
(iv) Movement of capital.

(*b*) *The Economic Question.*

Improved conditions of production and interchange, with particular attention to—

(i) Tariff policy.
(ii) Prohibition and restriction of importation and exportation, quotas, and other barriers of trade.
(iii) Producers' agreements.

The Lausanne Conference emphasized in particular the necessity of restoring the currencies on a healthy basis, and of thereby making it possible to abolish measures of exchange control and to remove transfer difficulties. Further, the Conference was impressed with the vital need of facilitating the revival of international trade.

World Economic and Monetary Conference, London, 1933

I. INTRODUCTION.

(1) Since 1918: About twenty-five International Conferences. 1924: World's trade declined two-thirds.

To-day 30,000,000 unemployed. Loss of wages, £4,000,000,000 per annum.

(2) Since 1928 a process of deflation; or a fall in the level of commodity prices.

No great nation can continue to flourish or even to exist if the various farmers are no longer able to carry on their work.

A rise of prices means a lowering of the currency unit.

(3) Results of resolutions of Lausanne Conference in July, 1932, on Reparations. The Powers participating in that Conference invited the League of Nations to convene a World Conference to "decide upon measures to solve the other economic and financial difficulties which are responsible for, and may prolong, the present world crisis."

Organization Committee under Sir John Simon. The United States of America accepted conditionally upon the exclusion of war debts from the agenda of the Conference.

II. MEASURES FOR CONSIDERATION.

(*a*) A continuation of the Conference of 1927.

(*b*) The Preparatory Commission at Geneva, January, 1933, decided upon the following subjects for discussion—

(1) Monetary policy, including restoration of an effective gold standard.

(2) Improvement of prices and regulation of production.

(3) Exchange controls and movement of capital.

(4) Great freedom of trade, covering abolition of quotas and revision of tariff policies. "Economic disarmament."

(*c*) Visit of British Prime Minister to Washington.

III. CONFERENCE.

Opened 12th June, 1933, under the Presidency of the British Prime Minister.

(1) Agenda by a Committee of Experts.

(2) Discussions revealed a large measure of agreement.

(3) When it came to methods there were wide divergencies of opinion.

(4) At the commencement the desire on the part of all the delegates to come to a satisfactory agreement with one another was evident.

IV. CONSTITUTION.

(1) Conference of sixty-seven nations: All but three accepted.

(2) Bureau or Executive.

(3) Economic Commission with sub-committees on—

(*a*) Co-ordination of production and marketing.

(*b*) Indirect protectionism, including marks of origin and export bonuses.

(*c*) Subsidies, bounties, and commercial policies.

(4) Monetary and Financial Committee (chairman, Governor Cox) with sub-committees on

(*a*) Immediate measures for restoring financial stabilization including—

(i) Credit policy.
(ii) Price levels.
(iii) Limitation of currency fluctuation.
(iv) Exchange controls.
(v) Problems of indebtedness; and
(vi) Resumption of lending.

(*b*) Permanent measures of Financial Reconstruction, including—

(i) Re-establishment of an international monetary standard.
(ii) Gold standard.
(iii) Silver standard.

V. British Government Policy.

Outlined by Mr. Neville Chamberlain, 15th June, 1932—

(1) Higher wholesale prices.
(2) Cheaper money.
(3) Return to the Gold Standard.

VI. Attitude of the U.S.A.

(1) President Roosevelt's message to fifty-four nations, 16th May, 1933.

"It must, in short, substitute for individual domestic programmes economic recovery by wise and considered international action."

(2) Stabilization of currency.
(3) United States leaves gold standard.
(*a*) Introduced a new factor.
(*b*) Opinions became somewhat divided.
(*c*) Desire to continue deliberations.

VII. Currency Stabilization.

(1) Question loomed up at an early stage.
(2) Gradually acquired a greater gravity.
(3) Brought some work of the Conference to a standstill.
(4) Impossible to conceive of the complete return to the normal functioning of trade and commerce unless we could have an international monetary standard.

VIII. Crisis on 29th June, 1933.

The American Administration's firm refusal to commit itself to any definite economic and financial policy was certainly the rock upon which the Conference struck.

(1) The six European gold standard countries in consultation with British and U.S.A. delegates prepared on 29th June, 1933, a definite and resolute declaration of their own views.

(2) The British policy was a mediatory one—an endeavour to formulate a scheme which would produce agreement between the group of Continental gold countries and those who had left gold.

(3) Considerable pressure was brought to bear upon the British delegation to support the gold countries as against the inflationist policy of America.

(4) 1st July, 1933, President Roosevelt considered "a temporary stabilization as a banking rather than a governmental problem and therefore outside the immediate realm of the World Economic Conference."

IX. TARIFF TRUCE.

(1) Proposed by U.S.A. just before the Conference.

(2) Agreed to by fifty-nine nations on 5th July, 1933.

(3) Agreement by central banks for stability of exchanges.

(4) The American Government did not consider a temporary stabilization as timely at the present moment.

X. ATTITUDE OF GOLD COUNTRIES, viz., France, Italy, Belgium, Holland, Switzerland, and Poland—

(1) Avoid anything in the nature of competitive fluctuations of currency while the Conference is going on.

(2) Declaration drawn up on these lines but rejected by the President of the U.S.A.

(3) "Effect was very profound and very disturbing." (*Mr. Neville Chamberlain.*)

(4) So long as exchanges were unstable it would be better to wait for stabilization.

XI. ATTITUDE OF UNITED KINGDOM DELEGATION in conference with Dominions and India.

(1) In favour of continuing the Conference, but limited as far as might be found necessary to the work of certain organs of the Conference.

(2) As matters have turned out the Conference received a severe check.

XII. RESULTS.

I. THE MONETARY AND FINANCIAL COMMISSION

(1) *Sub-Commission on Immediate Measures of Financial Reconstruction.*

(*a*) *Problems of Indebtedness.* Recommended governments to encourage bondholders' associations. Recognized the desirability of maintained payments but also in certain cases the inevitability in the interests of creditors and debtors alike of arrangements based on debtors' capacity to pay.

(*b*) *Credit Policy, Price Level, Exchange Control; Limitation of Monetary Fluctuations; Resumption of International Lending.* Discussion was limited to the outlining of the main problems to be solved.

(2) *Sub-Commission on Permanent Measures for Re-establishment of an Internal Monetary Standard.*

(*a*) *Silver.* Recommended silver producing and using countries to agree to mitigate fluctuations (this was, of course, done outside the Conference proper), and all Governments to refrain from debasing silver coinage and to substitute silver coins for low value notes.

(*b*) *The Gold Standard.*—The Sub-Commission unanimously advocated re-establishment of international monetary stability through the gold standard, "time and parity" being for each country to determine.

(*c*) Problems connected with the working of the Gold Standard.

(i) Recommended the "gold bullion" standard.

(ii) A minimum reserve ratio of 25 per cent is sufficient and greater elasticity in central bank cover provisions is desirable.

(iii) Independent central banks are essential, and the Bank of International Settlement should be an instrument of common action.

(iv) Gold movements which reflect disequilibria in balance of payments should be freely permitted, and central banks should endeavour to reduce fluctuations in business activity and in the purchasing power of gold.

II. The Economic Commission

(1) *Sub-Commission on Co-ordination of Marketing and Production.*

(*a*) *General Principles.* Agreed that such schemes must (i) apply to commodities of great importance of which excessive stocks exist; (ii) be comprehensive, including, if necessary, substitutes and related products; (iii) have the support of a substantial majority of producers; (iv) be fair to consumers; (v) be administratively practicable; (vi) be of adequate duration; (vii) be flexible; (viii) take account of the desirability of encouraging efficient production.

(*b*) *Specific Commodities*—

(i) Dairy Products (ii) Sugar (iii) Wine (iv) Coffee (v) Cocoa	Continuation and institution of studies and negotiations recommended in co-operation with the Economic Committee of the League or with the International Institute of Agriculture.
(vi) Timber	Discussions postponed until October 1933, pending collection of fuller statistics and framing of policies.
(vii) Coal	Principal producers invited to endeavour to organize internationally, supplemented by agreements with importers. League to convene special conference of producing and consuming nations if independent negotiations not successful within six months.
(viii) Copper	Government of producing countries to submit views to League before 15th September, 1933.
(ix) Tin	Extension of present scheme to non-signatories recommended as growth of their production endangers its continuation. Method for computing their quotas suggested.

(2) *Sub-Commission on Commercial Policy*. This Commission worked on the hypothesis of eventual stabilization, or at any rate *de facto* stability of currencies. Some nations insisted on retaining full liberty of action regarding quotas, exchange controls or tariffs, others held that a constructive policy would be worked out to indicate measures to be taken when stability had been achieved.

(*a*) *Quantitative Restriction on the Exchange of Goods*. Unanimously condemned in principle but defended in certain cases of practice, either as applied to agricultural products pending international agreement on the organization of production or as the means of carrying out such organization. Consideration of a draft agreement of principle for the return to normal conditions was slow, some nations insisting that their undertakings were contingent not only on *de facto* currency stability, but also on progress made in the return to normality in other directions.

(*b*) *Tariff Policy and the Most-Favoured-Nation Clause*.

(i) Regarding Tariff Policy in general, three schools of thought were voiced—that multilateral reductions alone can

attain desired results; that Customs duties can be lowered only by bi-lateral treaties; that both methods should be adopted.

(ii) The Most-Favoured-Nation Clause in its fullest and widest form was generally favoured as the easiest method of securing general lowering of duties through bi-lateral negotiations. Exceptional cases of many kinds were recommended, however, by various nations, but not considered owing to lack of time.

(3) *Sub-Commission on Indirect Protectionism.*

(*a*) *General.* Proposed that governments should bind themselves to negotiate on any new measure they may introduce which is considered by another Government to nullify or impair any object of any treaty between the two Governments.

(*b*) *Veterinary Questions.* (i) An international Conference to be summoned to negotiate agreements concerning contagious diseases of animals, their transit, and trade in animal products other than meat; (ii) League of Nations to examine problems of importation and exportation of meat.

(*c*) *Phyto-Pathological Questions.* International Institute of Agriculture asked to devote attention and research to prevention and cure of diseases in cocoa, and to study other questions involved in the control of the trade in plants, submitting general principles of draft regulations.

(*d*) *Marks of Origin.* Sub-Commission agreed that laws and regulations on marks of origin should be non-discriminating between different countries, not damaging to the goods, and effectively made public, and should permit of aggrieved persons instituting proceedings for redress; and that it is desirable that a simple and uniform nomenclature should be established.

(*e*) *Subsidies and Bounties.* (i) The French delegation drew a distinction between subsidies for production and subsidies for export, condemning only the latter; the German delegation held that any State must take the measures it thought necessary for the reconstruction of its national economic system and only "artificial" subsidies could be attacked; (ii) The appeal of the British, Scandinavian, and Netherlands delegates for the abolition of shipping and shipbuilding subsidies was met by the French proposals of international agreements for joint working on the chief routes, and by the American expression of determination to obtain equality of status for its vessels.

(4) *Public Works.* These were considered by the Economic Commission as a whole, but deferred, as the Monetary and Financial Commission had not been able to consider the financial aspects of the question.

XIII. FUTURE DISCUSSIONS.

(1) The regulation of production and marketing.

(2) Agreement as to a return to gold standard, or an international monetary standard.

(3) The raising of the price level of wholesale commodities.

XIV. CONCLUSION. The achievements must frankly be regarded as disappointing.

(1) The chief troubles from which the world is suffering to-day are international in their origin; and they can be solved only by international action and agreement.

(2) At the bottom of the whole problem lies lack of confidence.

(3) "The World Monetary and Economic Conference must not fail, will not fail, because it dare not fail."—(*Cordell Hull, at the Pilgrims' Lunch, 27th June*, 1933.)

(4) President Roosevelt to America, 25th July, 1933.

(i) Raise wages.
(ii) Shorten hours.
(iii) Legislation—
(*a*) Farm Act.
(*b*) Industrial Recovery Act.

(5) The way has been prepared for further constructive action towards the remedying of a number of the economic ills from which the world is suffering.

(6) The spirit in which the delegates parted and which has doubtless by now been imparted to some of their countrymen furnishes the best hope of more fruitful outcome of a resumed Conference.

Wheat Conference. London, August, 1933

1. CHAIRMAN: Mr. R. B. Bennett, Prime Minister of Canada.
Thirty-one countries represented.
Twenty-two countries signed on 25th August, 1933.
2. OBJECT: To adjust supply to demand and raise prices.
3. BASIS: (1) An international price fixed of 63·02 gold cents a bushel (between 30s. and 31s. a quarter).
(2) When this price has been maintained for four months the importing countries to revise their tariffs.
(3) In return for these higher prices, the exporting countries agreed to limit their exports for the year 1933–34 to 560,000,000 bushels.
(4) In the following year these countries, with the exception of Russia and the Danubian States (who agree to limit their exports to agreed figures), agreed to reduce production by 15 per cent.

SECTION VIII

IMPERIAL AND FOREIGN RELATIONS

CHAPTER XXXIX

THE DOMINIONS AND COLONIES

THE COLONIAL OFFICE was established in its present form in 1854. Prior to the beginning of the nineteenth century the affairs of the Colonies were in the hands of the Home Secretary. They were then transferred to the newly-established Secretary of State for War and the Colonies. At the time of the Crimean War it was found that the duties were too heavy ; and so the new office of Secretary of State for the Colonies was created.

Definition

THE INTERPRETATIONS ACT, 1889, defines a Colony as any part of His Majesty's Dominions exclusive of the United Kingdom, the Channel Islands, the Isle of Man, and of British India. This definition includes many types. The following are the main divisions: Self-governing Colonies, Crown Colonies, Dependencies, Protectorates, Areas of Chartered Companies, Spheres of Influence, and Mandatory Territory.

Classification

"The British Colonial Empire, comprising the whole of the territories under the control of the Colonial Office, with an area of 2,000,000 square miles, a population of some 50,000,000, and a rapidly expanding trade of over £500,000,000 a year, constitutes a by no means negligible element in the wide framework of the British Commonwealth." (*Memorandum of the Colonial Office*, February, 1929.)

Colonies may also be classified as settled, conquered, ceded, or mandatory, according to the circumstances in which they were originally acquired—

(*a*) Settled Colonies are those which, at the time of occupation, were uninhabited or inhabited by tribes whose laws and customs were inapplicable to a civilized race, *e.g.*, Australia.

(*b*) In conquered and ceded Colonies the Crown enjoys the right of legislation either by Order in Council or by proclamation or letters patent, *e.g.*, Canada, before responsible government was granted.

Dominions Office

In July, 1925, a new Secretaryship of State for Dominion Affairs was created, and as a result the Dominions Office was set up to take over from the Colonial Office business connected with the self-governing Dominions (including the Irish Free State), the self-governing colony of Southern Rhodesia, and the South African territories of Basutoland and Bechuanaland Protectorate, Swaziland and business relating to the Imperial Conference.

In 1926 the office of Under-Secretary for Dominion Affairs was established and carried with it the position of Chairman of the Overseas Settlement Committee.

ADMINISTRATION. The Department possesses two Assistant Under Secretaries of State together with Assistant Secretaries, Legal Adviser, Principals and the usual additional staffs.

A SELF-GOVERNING COLONY OR DOMINION is practically a separate state as far as internal affairs are concerned. There is usually a Governor-General, who represents the Crown, and is the Chief Magistrate for the Colony, and the medium of communication with the Home Government and with other Colonies. The self-governing Dominions are the Irish Free State, Canada, Newfoundland, Australia, New Zealand, the Union of South Africa and Southern Rhodesia.

DEFINITION. The Self-governing Communities composed of Great Britain and the Dominions "are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." (*Report of Committee on Inter-Imperial Relations*, adopted by the Imperial Conference, 19th November, 1926.)

In Colonies with representative governments, the consent of the Governor-General is necessary to the enactment of colonial laws. The Governor may adopt one of four courses: (1) He may assent; (2) he may withhold his assent altogether; (3) he may assent, suspending the operation of the Bill until it is confirmed by the Crown; (4) he may reserve the Bill for the Crown's consent.

The Colonial Laws Validity Act, 1865, was passed to extend colonial legislation, and to make valid all acts not contrary to the Imperial Statutes. It provides "that any 'colonial law' which conflicts with the provisions of an Imperial Statute intended to apply to the Colony in question shall be deemed void." The Constitutions of the self-governing Colonies are, therefore, like those of the United States of America, written and rigid. They

are embodied in a Statute of the Imperial Government. They cannot in general be altered by the ordinary methods of colonial legislation. The South Africa Act, 1909, section 152, made special provisions applicable to this Dominion.

Statute of Westminster, 1931. The Statute of Westminster, 1931, is one of the products of the Imperial Conference, 1930, and its object is to regularize the position of the Dominions in regard to British Legislation. Under it, no Act of the British Parliament passed after the statute has come into law can be part of the law of any Dominion unless the Dominion has expressly consented to adopt it. Since all the Dominions have passed the statute, it came into force immediately. The Statute of Westminster, as far as it goes, is really an experiment in the direction of an Imperial Constitution. It is intended to clarify the position of the Dominions to the Mother Country and, equally, that of the Mother Country to the Dominions.

HIGH COMMISSIONERS are appointed by the Dominions as Agents in London.

High Commissioners of the United Kingdom. As a result of the definition of Dominion status contained in the Statute of Westminster, 1931, the Governor-General of a Dominion represents only the King. Consequently, it has been found necessary for His Majesty's Government to appoint a High Commissioner in Canada, in the Union of South Africa; and in the Commonwealth of Australia.

Empire Federation

The unofficial process whereby the spirit of Empire Federation has been fostered and encouraged may be indicated in the titles of the organizations which have developed for that purpose, viz.—

1868. Royal Colonial Institute—fostering interest.
1882. Incorporated by Royal Charter.
1884. Imperial Federation League (Lord Rosebery).
1893. Imperial Federation (Defence) Committee.
1901. League of Empire.
1910. Overseas Club.

Imperial Conference

The Imperial Conference originated as the result of the presence in London, in 1887, of the Premiers of the various self-governing Dominions, representing their nations at the celebration of the Jubilee of Queen Victoria. Similar gatherings took place in London in 1897, 1902, 1907, and 1911. Until 1907 the gathering was called the "Colonial" Conference, but in that year the title was changed to "Imperial" Conference.

At the earlier meetings the Colonial Secretary presided, but with the change of title additional importance was given to the assembly by the assumption of the Presidency by the Prime Minister of Great Britain.

In 1917 and 1918 the Conference, which was held concurrently with the sessions of the Imperial War Cabinet, was called the Imperial War Conference, and was held under the Chairmanship of the Secretary of State for the Colonies. In 1921 a meeting of the Premiers was held and further Imperial Conferences were convened in 1923, 1926, 1931 and for the Jubilee in 1935.

The constitution of the Conference is as follows: President: the Prime Minister of Great Britain; Chairman (in the absence of the President) The Secretary of State for Dominion Affairs, Members: the Prime Ministers and other Ministers of the self-governing Dominions and the Secretary of State for India.

The Report on Inter-Imperial Relations, 1926, is exceedingly valuable. It contains an important declaration concerning the status of the self-governing dominions. (*See* page 281.)

Imperial Economic Conference

In accordance with the decision arrived at by the Imperial Conference in London, held in 1931, an Imperial Economic Conference was held at Ottawa, Canada, in July, 1932. The delegates included seven Cabinet Ministers, Indian delegation, the South African and South Rhodesian representatives, as well as representatives of Australia, New Zealand, South Africa, and the Irish Free State.

The subjects of discussion at the Conference were divided under three general headings—

(*a*) The examination of the aspects of general trade and tariff policy and the administration affecting Empire Trade;
(*b*) Monetary and financial questions; and
(*c*) The negotiation of trade agreements.

Under the first heading the following specified items were included—

(1) Recognition of the principle of reciprocal tariff preferences within the Commonwealth of British nations.

(2) The general application of existing and future tariff preferences within the Commonwealth.

(3) The extension to other parts of the Commonwealth of tariff advantages accorded to foreign countries.

(4) The determination of the percentage of "Empire content" necessary to secure preferential tariff treatment.

(5) Export bounties and anti-dumping duties within the Commonwealth.

Commercial treaty policy was discussed with respect to foreign countries. This discussion included the relation of inter-Imperial preferences to concessions granted to foreign countries, together with the interpretation to be given to the "most-favoured-nation" clause, with particular reference to the development of regional preferences and systems of imports quotas.

Under the first heading there were considered the appropriate basis and means of effecting inter-Imperial economic co-operation, including the review of existing agencies, the examination of the report of the Imperial Economic Committee on Industrial Co-operation, and a discussion of communications, research, and standardization.

Under the second heading, relative monetary and financial questions were considered. These involve the existing inter-relationships of the various currencies and monetary standards of the Empire, and the desirability of taking steps, as far as practicable, to restore and stabilize the general price level and rates of exchange.

OTTAWA DECISIONS. The Dominions went to the Ottawa Conference with the hope that we would introduce high protection to secure the British market for their products.

We hoped that they would open their markets to our manufactured goods in return for increased preferences on their products. In effect, the two parties had different aims, and as was to be expected, the result of the Conference was in the nature of a compromise.

The agreements reached between this country and the Dominions provided for a scheme of reciprocal preference. Great Britain agreed to impose duties upon a number of foodstuffs, including wheat 2s per quarter, maize (flat white), butter, cheese, certain fruits (canned and raw), eggs, and condensed milk, and to perpetuate the existing 10 per cent preference on a large number of Empire products.

Each of the Dominions in return maintained or increased the preferences accorded to British goods, mainly manufactured articles, among the most important items being textiles, including clothing, iron and steel goods, machinery, and electrical goods.

The results of the Conference indicated with reasonable certainty that the Dominions will not relinquish the protection of their industries from the competition of this country.

A grave charge levied against the Ottawa result is that, by agreeing to perpetuate the preference on Empire goods, we have relinquished or seriously damaged a valuable bargaining weapon in the cause of world tariff reductions in exchange for a somewhat doubtful gain to our trade within the Empire.

NEWFOUNDLAND. In January, 1934, it was announced by the Dominions Office that the King had approved the appointment of the Commission of Government established in Newfoundland over which the Governor will preside.

SOUTHERN RHODESIA. In May, 1934, the Parliament of Southern Rhodesia passed a resolution "In the opinion of the House the time has arrived when the colony of Southern Rhodesia is well fitted to enjoy the benefits, rights, and privileges of full responsible Government. With this end in view, the House requests the Government firstly to take into consideration the introduction of legislation to amend the relative provisions of the Southern Constitution Letters Patent of 1923; secondly the House asks the Imperial Government to amend the Letters Patent constituting the office of Governor, instructions passed under Royal sign manual and signet to the Governor as amended from time to time, and the Statute of Westminster, 1931."

WESTERN AUSTRALIA In February, 1935, a Joint Committee of both Houses of Parliament was set up to consider the petition from Western Australia "for a Bill to effectuate the withdrawal of the people of Western Australia from the Federal Commonwealth in Australia and to report whether the same is proper to be received."

THE OVERSEAS SETTLEMENTS BOARD was constituted in February, 1936, under the Chairmanship of the Under-Secretary for the Dominions. The functions of the Board are to advise the Secretary of State upon specific proposals for schemes of migration within the Empire and upon any matters relating to overseas settlement which might be referred by him to the Board.

Colonial Office

ADMINISTRATION. The Colonial Office is under the Secretary of State for the Colonies assisted by a Parliamentary Under-Secretary of State. The Department possesses a Permanent Under-Secretary of State together with a Deputy and three Under-Secretaries of State, Legal Adviser, and the usual staff.

Classification of Colonies

Colonies may be classified as follows—

1. A CROWN COLONY is an overseas possession of the Crown (other than British India) which does not enjoy powers of self-government, being subject to the control of the Colonial Office in the management of its daily affairs, or in which the Crown has the sole right of legislation either through a Governor or by Order in Council.

The old system of a Governor appointed by the Crown, with a legislature elected by the people, has disappeared in most of the Colonies where the inhabitants are not mainly of European origin. In Canada, Newfoundland, Australia, and New Zealand the majority of the inhabitants were European and could generally be trusted to govern themselves. But such a system would possibly have disastrous results in the case of a native population of a primitive type. There are some Colonies where the population was chiefly white one hundred years ago, but is no longer so now. Such Colonies have tended to lose the remnants of self-government which they formerly possessed, while the self-governing Colonies have tended towards a more complete control of their own affairs. Before the abolition of slavery, practically the only people who were considered were the Europeans; since then natives and negroes can also claim protection as citizens of the British Empire.

The Crown Colonies are of four different types—

(*a*) *Those possessing no legislature* at all and in which the Crown has the sole power of legislation, which is exercised through a Governor, Commissioner, or Resident alone. Such are the military stations like Gibraltar and St. Helena, or half-explored tracts like the interior of Africa. Ascension Island, which was formerly administered by the Board of Admiralty, has now been transferred to the Colonial Office.

(*b*) *Those having a legislature entirely nominated* by the Crown or the Governor. This is necessary when the proportion of European residents is small, *e.g.*, in Honduras, some of the British Possessions in the West Indies and Central America, and in most of the Colonies of the tropical coasts of Africa. The Crown has the control of legislation and administration.

(*c*) *Those having a legislature, wholly or partly elected,* like Jamaica, Cyprus, Ceylon, Mauritius, whose legislative chambers consist of members half of whom are elected by the inhabitants and half nominated by the Governor.

(*d*) *Those having an elected assembly.* Of this old type only three examples remain—the Bermudas, the Barbados, and the Bahamas. The Bermudas and the Barbados have the oldest representation in the British Empire, except the House of Commons. Yet in these cases the Executive is not responsible to the Legislature. In these Colonies the Crown retains only the right of veto. The public officers are, however, under the control of and responsible to the Crown, acting through the Colonial Secretary.

2. A PROTECTORATE is a country or district which is administered through advice from this country, which guarantees it from

outside interference, *e.g.*, Kenya, Uganda. The most important Protectorate is India, which was first opened up by a trading company, but which, in time, became a ruling instead of a trading concern. After the Mutiny, in 1857, a Viceroy was appointed, but apart from the general lines laid down by the Home Government, India rules itself.

3. DEPENDENCIES, which have never been formally annexed by this country, but for all practical purposes may be considered as governed by the British Government. An example of such a territory is Nigeria.

4. AREAS OF CHARTERED COMPANIES, the oldest in this respect being the Hudson's Bay Company, which was incorporated on the 2nd May, 1670. The King in Council grants a charter to a company for the purposes of trade and, in course of time, various acquisitions are made.

5. SPHERES OF INFLUENCE really signify areas over which no special power has been exercised or right claimed, but as to which other nations have undertaken not to attempt to acquire influence or territory by treaty or annexation. There are certain countries in which Great Britain takes a certain responsibility as regards government, giving advice to the native ruler. Such is the case in the Persian Gulf and in Arabia. It is conceivable that these areas may eventually develop into Protectorates, and later become Dominions.

6. MANDATORY TERRITORY, which has been handed over by the League of Nations to be administered on its behalf, *e.g.*, Palestine and Mesopotamia (Irak). (*See* page 321.)

7. DOMINION PROTECTORATES. Papua placed under the guardianship of the Australian Government.

THE CROWN AGENTS FOR THE COLONIES are appointed by the Secretary of State for the Colonies, and act as business and financial agents in this country for the Governments of the Crown Colonies and Protectorates.

Colonial Office Conferences

A Conference attended by Governors or other senior officials representing colonies, protectorates, dependencies, and mandated territories assembled in May, 1927, to exchange views on proposals of common interest to the Colonial Empire. The second Conference was held in June, 1930.

CHAPTER XL

THE IRISH FREE STATE

In September, 1921, a conference of delegates was held in London, and on the 6th December, 1921, terms were signed by all the delegates.

The terms, as agreed, offered to Ireland the full dominion status of Canada under the title of The Irish Free State, subject to the following conditions:

(1) Irish Members of Parliament to swear allegiance to the Free State and declare fidelity to the Crown. (*See* page 289.)

(2) The Free State to contribute towards the National Debt and the cost of war pensions; and to compensate public servants displaced through the change of government.

(3) Imperial forces to undertake Irish coast defences for at least five years, and to receive certain facilities at specified ports.

(4) Any Irish military defence force to be limited in numbers proportionately to the like force in Great Britain.

(5) Northern Ireland to have the option of contracting out of the Free State, in which case the boundaries as between the two spheres of Government should be defined by a Commission; but should Ulster decide to join with the Free State, her present powers of government were to be retained, subject only to certain functions properly exercisable, under safeguards, by the Free State Government.

(6) No religion to be endowed or boycotted by either Irish Parliament.

(7) The treaty of agreement to be ratified on approval by the Imperial and Southern Irish Parliaments.

The Irish Free State (Agreement) Act, 1922, received the royal assent on the 31st March, 1922, following the passing of which Northern Ireland took steps immediately to contract out of the Free State. In due course a Boundary Commission was established with the object of determining the boundaries, and confirmed that which existed. Finally, the Constitution was passed by Dail Eireann on the 25th October, 1922, and by the British Parliament on the 5th December, 1922. On the following day, His Excellency, Timothy M. Healy, K.C., was sworn in as Governor-General, and, all the necessary formalities having been complied with, the Irish Free State (*Saorstat Eireann*) came legally and actually into existence.

THE LEGISLATURE (*Oireachtas*) consists of the King and the Chamber of Deputies (*Dail Eireann*). The *Chamber of Deputies* is elected by secret ballot on the principles of proportional representation and by direct vote of all citizens above the age of 21 years who comply with the electoral law, and consisting of not less than one member for each 30,000 of the population, and not more than one member for each 20,000 of the population. Every citizen who has reached the age of 21 years is eligible for the Chamber of Deputies.

THE EXECUTIVE is vested in the King, and is exercised in accordance with the law, practice, and constitutional usage governing the exercise of the executive authority in the case of the Dominion of Canada by the representative of the Crown.

THE EXECUTIVE COUNCIL (*Aireacht*) is responsible to the Chamber of Deputies, and consists of the President and the following Ministry: Vice-President and Minister for Finance, and Minister for Posts and Telegraphs; Minister for Justice, Minister for Industry and Commerce, and Minister for External Affairs; Minister for Lands and Agriculture; Minister for Local Government and Public Health; Minister for Defence; Minister for Fisheries; and Minister for Education.

THE REFERENDUM provides for the submission of any Bill affecting the Constitution passed by the Dail to a "Referendum" of the people. The right to avail of the Referendum comes into effect 16 years from the 6th December, 1922.

The two principal points of difference between this country and the Irish Free State since the advent to power of Mr. de Valera are—

(1) The Oath of Allegiance, which is referred to in par. (1) of page 290; and

(2) The Land Annuities.

The Irish Free State Land Purchase (Loan Guarantee) Act, 1924, authorized the Treasury to guarantee a loan to be raised by the Government of the Irish Free State for the purposes of land purchase in that State. The securities so guaranteed are not in the aggregate to exceed £30,000,000 sterling in nominal amount and were to be issued within a period of eight years from the passing of the Act.

The payment of the instalment of the land annuities by the Irish Free State to the British Government expired at midnight,

30th June, 1932. Consequently, upon the failure to make the payment the Irish Free State (Special Duties) Act, 1932, was passed, which authorizes the Treasury to impose duties on the importation of Free State produce into this country.

THE OATH OF ALLEGIANCE. In the House of Commons in May, 1933, the Secretary of State for the Dominions stated that he had observed the action of the Irish Free State Government and Parliament in passing the Constitution Oath Bill in the Dail. The position of his Majesty's Government in the United Kingdom is as follows—

They have, throughout, made clear their view that the attempt to abolish the Parliamentary Oath in the Irish Free State is in direct conflict with the obligations undertaken by the Irish Free State under the treaty of 1921. This is confirmed by the form of the Irish Free State legislation. The treaty is the fundamental basis of the position of the Irish Free State, and in order to achieve their object the Irish Free State Government have been compelled to include in their legislation clauses purporting not only to abolish the requirements of the Parliamentary oath, but also to repeal those provisions of the Constituent Act and the constitution of the Irish Free State which set out that the treaty has the force of law and overriding authority in relation to the Constitution.

As regards the position which arises on the passage of the legislation, His Majesty's Government in the United Kingdom consider that the passing of the Bill will not affect the duty of allegiance to the King or amount to an act of secession. They are advised that the allegiance of the members of the Irish Free State Parliament does not depend upon the swearing of the oath which by the treaty and the Constitution they are required to take, and therefore that a failure to take the oath is not in itself a repudiation of allegiance. This does not alter the fact that in the view of His Majesty's Government in the United Kingdom the removal of the oath is a breach of the treaty.

THE SENATE. In May, 1936, the Senate was abolished by resolution of Dáil Éireann. A Committee is at present examining the question of constitutional reform and in particular the question of a second Chamber to replace the abolished Senate.

THE IRISH NATIONALITY AND CITIZENSHIP ACT, 1935, proposes to abolish British Citizenship within the Irish Free State. An Order issued under this Act in April 1935 excludes citizens of the British Empire from the provisions of the Act.

TABLE OF SOME SELF-GOVERNING DOMINIONS AND THEIR CONSTITUTION

	Northern Ireland	Irish Free State	Canada	Australia	South Africa
Acts of Parliament.	Government of Ireland Act, 1920.	Irish Free State (Agreement) Act, 1922.	British North America Acts, 1867 to 1886.	Commonwealth of Australia Constitution Act, 1900.	Union of South Africa Act, 1909.
Type .	Unitary.	Unitary	Federal.	Federal	Unitary.
Executive .	(1) Governor. (2) Cabinet.	(1) Governor-General. (2) Executive Council (Aireacht).	(1) Governor-General. (2) King's Privy Council.	(1) Governor-General (2) Federal Executive Council.	(1) Governor-General. (2) Executive Council.
Legislature .	(1) Governor. (2) Senate. (3) House of Commons.	(1) Governor-General (2) Chamber of Deputies (Dail Eireann)	(1) Governor-General. (2) Senate. (3) House of Commons.	(1) Governor-General. (2) Senate. (3) House of Representatives	(1) Governor-General. (2) Senate. (3) House of Assembly
Senate .	26 members 24 elected by House of Commons, 2 *ex officio*.	Abolished May 1936 (See page 290)	96 members appointed by Governor-General for life.	6 members for each of the States. Directly chosen for six years	8 members chosen by Governor-General, 8 elected by the four Provincial Councils and House of Assembly for ten years.
Lower House.	52 elected members.	Member for each 30,000 population.	245 members elected for five years by the Provinces.	Members proportionate to population elected for three years with a minimum of 5 for each State.	135 elected members for four years proportionately for each of the 4 States.

IRISH FREE STATE TRADE AGREEMENT. In January, 1935, it was announced that a reciprocal Trade Agreement has been made between the Imperial Government and the Irish Free State relative to the importation of British coal and the Exportation of cattle from the Irish Free State

The table on page 291 may help to visualize the differences in the constitution of certain Dominions.

CHAPTER XLI

INDIA

" BRITISH INDIA " means all territories governed by the King-Emperor through the Governor-General of India, or through any officer subordinate to him. " India " means British India together with any territories of any native prince or chief under the suzerainty of His Majesty, exercised through the Governor-General of India or any officer subordinate to him.

HISTORICAL. Great Britain did not come to govern India because she desired to do so. The alternative would have been disastrous. The withdrawal of Britain would only have resulted in the occupation by some other Western Power. The East India Company primarily intended to trade and not to make territorial acquisitions, but the development of anarchy in the eighteenth century resulted in the East India Company becoming a ruling body.

The Regulating Act of 1773, which created the first Governor-General, a Council of five members, and a Supreme Court, was the first statute that recognized the East India Company as a ruling body. Pitt's India Act of 1784 left the business affairs to a Court of Directors, but gave supreme military and civil authority to a Board of Control, whose President represented India in the House of Commons. In 1858 the Mutiny necessitated the Crown taking over all the territories governed by the East India Company, under the " Act for the Better Government of India." The Act of 1858 substituted a Council for the Board of Control, and the Secretary of State for India took the place of the President of the Board of Control.

In 1885 the first session of the Indian National Congress was held in Bombay. Certain educated Indians claimed the right to share in the government of their country. There was an amending Act in 1889. In 1892 the Legislative Councils of India were enlarged to include Indians representing various classes and interests, but the Councils possessed consultative powers only. The Minto-Morley reforms were incorporated in an amending Act of 1907, and a final consolidation took place in 1915, when the Government of India Act was passed.

THE GOVERNMENT OF INDIA ACT, 1919, was based on the recommendations of the Montagu-Chelmsford Report, which was published in 1918. The Preamble of the Act reads—

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire;

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken;

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian people;

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility;

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest margin of Independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities."

This Act was in the nature of an experiment, and had to be the subject of a Report after ten years.

The Report of the Simon Commission

A Royal Commission, under the Chairmanship of Sir John Simon, was appointed in November, 1927, to consider and report upon the Government of India Act, 1919. The Report was issued in two volumes in June, 1930.

Vol. I, The Problem Surveyed, is divided into seven parts, as follows—

Part I. The Conditions of the Problem.
Part II. The Existing Constitutional Structure.
Part III. Working of Reformed Constitution.
Part IV. The Administrative and Judicial System.
Part V. The System of Public Finance.
Part VI. The Growth of Education in British India.
Part VII. Public Opinion in India.

Vol. II, The Recommendations, is divided into twelve parts, as follows—

Part I. General Principles.
Part II. The Governor's Provinces.

Part III. The North-West Frontier.
Part IV. The Centre.
Part V. Defence.
Part VI. Burma.
Part VII. The Indian States.
Part VIII. Finance.
Part IX. The Services.
Part X. The High Courts.
Part XI. Relations with Home Government.
Part XII. Conclusion.

These Recommendations may be summarized—

(1) The new Constitution should be an All-India Federation: An association of units formed mainly for the purpose of performing certain functions on behalf of all. It should "contain within itself provision for its own development."

(2) A Council should be set up for Greater India: One-third to be representative of Indian States.

(3) Each province should be as far as possible "mistress in her own house." The franchise should be broadened. Ten per cent should be enfranchised.

(4) A Federal Assembly should replace the present Legislative Assembly. It should consist of 250 to 280 members with a fixed life of five years. Members should be elected by the Provincial Councils by the method of proportional representation.

(5) The Viceroy should nominate his Executive—not the Crown.

(6) Burma should be immediately separated from India.

(7) Indian defence should be a matter of Imperial concern.

The Report concludes with a statement of the greatness of the contribution which Britain has made to Indian progress and of sympathy with Indian national aspirations.

The INDIAN STATES COMMITTEE, of which Sir Harcourt Butler was chairman, was appointed by the Secretary of State for India to inquire into the relationship existing between the Indian States and the Crown, and to make recommendations for the better adjustment of the economic and financial relations between the States and British India.

A ROUND TABLE CONFERENCE was convened by the Prime Minister and opened by His Majesty the King in Autumn, 1930. It sat for ten weeks. Its object was "to agree upon the principles which in advance should be applied to Indian Government and which should be made the foundation of any constitution which might ultimately be erected." As the result of the deliberations which ended in January, 1931, it is proposed to give effect to

the principle of responsible government as it is understood in the Dominions, but with the reservation that the Governor-General shall be responsible for defence and foreign relations.

The Second Round Table Conference resumed its sitting in Autumn, 1931. Three committees worked in India dealing with certain aspects of the problem. A Conference on Burma was held in London.

The Third Round Table Conference sat for more than five weeks and completed its sittings in London on 24th December, 1932. Agreement was reached on many points, notably in the realm of the franchise. On others, especially aspects of finance and distribution of powers, deep divisions of opinion remained among the delegates to the last.

The conference was successful in expressing representative opinion for the information of the Government, whose detailed proposals were to be drawn up in a White Paper. Then there was a joint Select Committee, leading up to the introduction of the historic Bill to give a new Parliamentary system to India.

PROPOSALS FOR INDIA CONSTITUTIONAL REFORM. Cmd. 4268. In December, 1931, both Houses of Parliament adopted a motion expressing approval of the Indian policy of His Majesty's Government, as announced to the Indian Round Table Conference and set out in Command Paper 3972. That policy, stated in the broadest terms, involved the prosecution of further inquiries and discussions with the object of finding a suitable basis for the conversion of the present system of government in India into a responsible government by Federation of States and Provinces, on the understanding that the responsible government so established must, during a period of transition, be qualified by limitations in certain directions.

It was hoped that these proposals would make clear the principles which His Majesty's Government have followed.

THE JOINT SELECT COMMITTEE ON INDIA CONSTITUTIONAL REFORM. In April, 1933, the Government announced the names of sixteen peers and sixteen members of the House of Commons who had been chosen to serve on the Committee under the Chairmanship of Lord Linlithgow, who was subsequently appointed in 1936 the Viceroy, to carry the changes into effect.

It was announced officially that the Committee had decided to call into consultation representatives from Indian States and British India. There were seven representatives of Indian States and twenty-one representatives of British India, the latter being made up as follows: Hindu, 9; Depressed classes, 1; Labour, 1;

Moslems, 5; Women, 1; Sikh, 1; Anglo-Indian, 1; European, 1; and Parsee, 1.

This Committee examined and discussed the proposed Bill with a representative body of Indians, whose influence was thus effectively exercised in the most important stage of the shaping of the reforms and before any irrevocable decision had been reached by Parliament. It did not seem necessary that this body should be identical in numbers and personnel with the Indian Round Table Conference, or with the Federal Structure Committee of the Conference.

Finally, there was a Bill—a single Bill providing alike for Provincial Autonomy and for Federation of Indian Provinces and States. This scheme was subject only to the effective agreement of the Indian States, to join in a federal system and to the inclusion of the famous safeguards so prominent during the Round Table Conference. The Bill contains measures that will enable the Provincial Constitutions to be set up without necessarily awaiting the completion of all the steps required for the actual inauguration of federation, which must depend upon the readiness of the princes, or at least of an important section of princes, to federate, and also upon the completion in detail of the proposals to be laid before Parliament.

The Royal Commission on Labour in India recommended more responsible local government.

REPORT OF THE JOINT SELECT COMMITTEE. The Report of the Joint Select Committee of Lords and Commons on Indian Constitutional Reform was issued on the 21st November, 1934.

There were thirty-one members of the Committee, and in the final division the voting was nineteen to nine—the minority being five Conservatives and four Labour members.

The Report is in two parts, Part I the Report proper, and Part II the Proceedings.

The Report proper consists of six sections—

I. A General Introduction entitled "The Principles of a Constitutional Settlement."
II. Provisional Autonomy.
III. Federation.
IV. The Central Government.
V. Special Subjects.
VI. Burma.

Chapters II to VI present a complete scheme for an Indian Constitution.

THE PRINCIPLES OF A SETTLEMENT. The Report advocated in substitution for the present centralised Government, an All-India

Federation of eleven self-governing British Indian Provinces (two of them new ones, Sind and Orissa) linked in a Federal system with Indian States, which would enter the Federation by the voluntary act of their rulers.

No change was contemplated in the internal regime of the States, nor in the relationship between their rulers and the Crown outside the Federal sphere. But it was proposed that the Provinces should manage their own affairs to a greater extent than at present. The Department of Defence and External Affairs would be reserved to the Governor-General.

PROVISIONAL AUTONOMY. The great majority of the departments of Government (among them law and order), as well as certain items of revenue, would be the business of the Provinces. The consent of the Governor would be required to legislation affecting Police Acts and rules.. The Federation would deal with matters such as currency and tariffs, which concern India as a whole.

The High Courts should have control of the promotions and postings of subordinate judges.

Defence and Foreign Relations would, however, remain the direct responsibility of the Governor-General, as they are at present.

Each of the Provinces would have an elected Legislative Assembly chosen by the direct vote of an electorate, which, together, would amount to about 14 per cent of the population, and in five Provinces there would be an Upper as well as a Lower House

THE FEDERATION. The Federation itself would have an Upper and Lower House composed of members indirectly elected by members of the Provincial Lower Houses and representatives nominated by the States. In all the Assemblies, Federal and Provincial, a quota of seats would be ensured to the various minorities Upper Chambers should be established in Madras, Bombay, Bengal, United Provinces, and Bihar.

THE CENTRAL GOVERNMENT. Both at the Federal centre and in the Provinces, Governments would be formed of Ministers responsible to their Legislatures in much the same sense in which the Cabinet in this country is responsible to Parliament. At present the Central Executive Government is responsible not to the Indian Legislature but to the Secretary of State and Parliament.

Under the plan, the executive power and authority of the Federation, including the supreme military command would vest in the Governor-General. He would be advised by a Council of Ministers in the exercise of all powers conferred upon him by

the Constitution Act other than those relating to Defence, External Affairs, Ecclesiastical Affairs, and the administration of British Baluchistan. He would also be entrusted with a special responsibility in certain specified matters.

THE PUBLIC SERVICES AND OTHER SPECIAL SUBJECTS. The Governor-General and the Governors, who would be the heads of the Federal Government and Provincial Governments respectively, should be guided by the advice of their Ministers, so long as they are satisfied that to do so does not conflict with certain "special responsibilities" imposed on them under the Constitution.

These would cover a wide field, and include such duties as the prevention of "grave menace to peace and tranquillity," the safeguarding of minorities, and (in the case of the Governor-General) the safeguarding of financial stability and credit.

The Committee made new recommendations on the subject of terrorism. Thus, in the Provinces and, with certain reservations, at the Federal centre, there would be a system of "Parliamentary" Government, except when circumstances called for the exercise of the over-riding powers of the Governor-General or the Governor.

The Committee advocated that recruitment in this country for the Indian Civil and the Police Services should continue, and that Service rights should be preserved.

Steps were proposed to protect the discipline of the police, and the independence of the judiciary, from the effects of political influences. A safeguard should be introduced against the fiscal freedom of India being used deliberately to discriminate against British trade with India by means of penal tariffs by providing that this shall be an additional responsibility of the Governor-General.

BURMA. The Report recommended that Burma should be separated from India and itself receive a similar Constitution. It should be accompanied by a trade agreement between the two countries binding for a specified time.

REVIEW IN TEN YEARS by the Legislature in India which should have the constitutional right to present addresses for the consideration of His Majesty's Government and Parliament recommending amendments of the Constitution on certain specified matters such as the composition of the Legislatures and franchise.

Government of India Act, 1935

The Government of India Act, 1935, in practically every respect follows the recommendations of the Joint Select Committee.

It is divided into fifteen Parts. There are 475 Sections and sixteen Schedules. It is the largest Act of Parliament. The Parts are as follows—

Part	I.	Introduction.
Part	II.	The Federation of India.
Part	III.	The Governors' Provinces.
Part	IV.	The Chief Commissioners' Provinces.
Part	V.	Legislative Powers.
Part	VI.	Administrative Relations between Federation, Provinces and States.
Part	VII.	Finance, Property, Contract and Suits.
Part	VIII.	The Federal Railway Authority.
Part	IX.	The Judicature.
Part	X.	The Services of the Crown in India.
Part	XI.	The Secretary of State, His Advisers and His Department.
Part	XII.	Miscellaneous and General.
Part	XIII.	Transitional Provisions.
Part	XIV.	Burma.
Part	XV.	Commencement and Repeals which provides that Part II of the Act shall come into force on such date as His Majesty may appoint by Proclamation. The remainder of the Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint (Sect. 477).

The administration under the Act of the Indian Empire may be considered in two divisions: (*a*) Home Government, (*b*) Indian Government.

(*a*) The Home Government

THE INDIA OFFICE is under the Secretary of State for India assisted by a Parliamentary Under-Secretary of State. In December, 1918, an Indian was appointed to this position for the first time. There is a Permanent Under-Secretary of State, a Deputy, and two Assistant Under-Secretaries of State.

The Department is divided into Divisions, viz.: Administrative under Assistant Secretaries and the Accountant-General; Executive under the Deputy Accountant-General; Miscellaneous including the Legal Adviser and Solicitor to Secretary of State; and India Audit Office under the Auditor.

Advisers to the Secretary of State under Part XI of the Act must number not less than three nor more than six, the exact number being left to the discretion of the Secretary of State, who also chooses the members. They must be Indian ex-officials, not less

than one-half of whom have held office under the Crown in India for at least ten years, and must not have last ceased to perform in India duties under the Crown more than two years prior to their appointment. The ordinary term of appointment is for five years, and the Advisers will not be eligible for reappointment. They are paid a salary. In matters requiring secrecy, the Secretary of State can act without consulting his Advisers. For instance, the Advisers would probably not be consulted on matters such as foreign policy or the relation between two states. Even when the Advisers are consulted, the Secretary of State can overrule them, except in cases where a decision of the Advisers is required by statute. The Council of India was dissolved by this Act.

(*b*) The Indian Government

THE GOVERNOR-GENERAL AND HIS MAJESTY'S REPRESENTATIVE as regards Indian States, sometimes called the Viceroy, is appointed by the Crown by a Commission under the Royal Sign Manual and holds office for five years.

The Federation of India is provided for in Part II of the Act, and His Majesty may declare it by Proclamation to be

(*a*) the Provinces hereafter called Governor's provinces, and

(*b*) the Indian States which have acceded or may thereafter accede to the Federation

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioner's Provinces.

THE COUNCIL OF MINISTERS consists of not more than ten members appointed by the Governor-General. In 1909 an Indian was appointed; in 1915 two Indians were appointed. The Commander-in-Chief of the military forces in India is an extraordinary member of the Council.

Roughly speaking, the Council of Ministers may be compared with the Cabinet of Great Britain. It exercises general control over the various local governments, and directly administers what are known as "central subjects," or "reserved subjects," the most important of which are naval and military affairs, relations with foreign states, and relations with our own native states.

There are ten Departments of State, each under a Secretary. Members of the Council of Ministers have one or more departments under their care. At the weekly meeting of the Council it is their duty to report any special matters relating to their departments which require consideration. The departments are Finance, Foreign and Political, Home, Legislative, Education, Army, Commerce, Industries, Health and Lands, Labour, and Railways.

FEDERAL LEGISLATURE. For the purposes of legislation there are two chambers, viz., the *Federal Assembly*, which corresponds

roughly, to our House of Commons, and the *Council of State*, which corresponds, roughly to our House of Lords.

THE COUNCIL OF STATE comprises 156 representatives of British India and 104 representatives of the Indian States.

THE FEDERAL ASSEMBLY, elected for 5 years, consists of 250 representatives of British India and not more than 125 representatives of Indian States. With the exception of a few reserved items the Federal Legislature votes the annual Budget. On almost all other matters of public policy members have the right to ask questions and the power to make recommendations to the Government in the form of resolutions.

THE GOVERNOR'S PROVINCES. British India is divided into the following Governor's Provinces, :—Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar Sind, and Orissa, the Central Provinces and Berar, Assam, the North-West Frontier Province, Agra and Oudh. The Governor is appointed by the Crown and the Council of Ministers is appointed by the Governor. Provincial Legislatures are elected. Certain subjects, called "reserved subjects," are still administered by the Governor-General in Council, but other subjects, called "transferred subjects," are controlled by the Provincial Legislatures in accordance with the Fifth Schedule to the Act.

THE CHIEF COMMISSIONER'S PROVINCES are British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, and the area known as Panth Piploda. For each Chief Commissioner Province there is a Chief Commissioner who is directly responsible to the Governor-General in Council.

All the Provinces, except Madras, are divided into Commissionerships and again sub-divided into districts, each in charge of an officer styled the Magistrate and Collector, or the Deputy Commissioner. Each provincial Government has a separate system of finance.

BURMA is separated from India and its Government is provided for in Part XIV of the Act.

CHAPTER XLII

THE FOREIGN OFFICE

THE Foreign Office is the department which conducts intercourse with other states. The office is of considerable antiquity. In 1433 Henry VI appointed a Secretary for Foreign Affairs. In 1539 the respective offices were merged into Northern and Southern Secretaries. The Lords Committee on Foreign Affairs was established in 1630. The Foreign Office in its modern sense dates from 1782, when the Secretary of State for Foreign Affairs was created, the occupant of the office replacing the former Secretary for the Northern Department of Europe.

For external purposes the Crown represents the community. The prerogative of the Crown is exercised in this respect, subject always to the collective advice of the Cabinet, through the Secretary of State for Foreign Affairs.

ADMINISTRATION. The Foreign Secretary is assisted in his work by two Parliamentary Under-Secretaries and by a Permanent Under-Secretary of State. There are also a Deputy and several Assistant Under-Secretaries of State, together with three Legal Advisers, and a staff of Councillors, Secretaries, and Assistants.

FUNCTIONS. The business of the Foreign Office, which is apportioned amongst twelve departments, can be classified as follows—

(1) The conduct of the general negotiations with Foreign Powers in matters of general jurisprudence, in making arrangements for passports and other general business.

(2) The preparation and supervision of dispatches, which are, however, submitted to the King before they are sent off. The Foreign Secretary informs foreign powers of Acts passed by the British Parliament which in any way affect them.

(3) The reception by the Foreign Secretary of the representatives of foreign powers at least one day a week. These interviews are very advantageous, enabling misunderstandings which may arise to be dealt with in a manner satisfactory to all parties.

(4) The preparation and arranging of treaties. One of the remaining rights of the Sovereign is that he shall personally sign all treaties in his own name; and until the Treaty of Peace, 1919, treaties were not even submitted to Parliament for consideration.

(5) Apart from the treaties, there are certain conventions which are made from time to time with various countries; they are usually of a commercial nature.

(6) The conduct of all relations in regard to international trade. (*See* Department of Overseas Trade (Development and Intelligence), page 115.)

(7) The government of certain dependencies of the Crown. Certain Protectorates are controlled by the Foreign Office, but the Channel Islands and the Isle of Man are under the jurisdiction of the Home Office. The expansion of European influence over less favoured portions of the globe has produced, amongst other things, the "Protectorate," which involves a philanthropic relation between the ruler and the ruled. Protectorates not closely connected with existing Colonies and not therefore under the Colonial Office, are administered by the Foreign Office.

EGYPT. This is particularly true of a number of Protectorates in Africa, especially Egypt, which was, before the War, ruled by the Khedive, under the suzerainty of the Turkish Sultan, but was in reality governed by a British Agent. Egypt became a British Protectorate on 18th December, 1914, but in 1922 obtained independence In September, 1936, a Treaty was signed between Great Britain and Egypt.

Anglo-Egyptian Sudan is independent of Egypt and under a British Governor-General.

The Diplomatic Service

As important and pressing matters cannot be dealt with wholly by correspondence, the interests of this country are superintended in all foreign civilized states of any importance by two classes of agents who reside on the spot, viz., diplomatic agents and consuls.

The Diplomatic Service is, generally speaking, political and ceremonial. It deals with matters of high policy, as contrasted with the Consular Service, which deals with domestic and commercial matters generally. By regulations adopted at the Congress of Vienna and Aix-la-Chapelle, 1814-15, and conformed to by all states, diplomatic agents are divided into the following classes, viz., ambassadors, ministers, and chargés d'affaires.

An AMBASSADOR has his headquarters at his embassy, and possesses certain privileges. An ambassador represents the person of his sovereign, from whom he receives a personal letter of introduction, known as a Letter of Credence. He is, therefore, granted the same privileges as could be claimed by his sovereign. He can demand access to the sovereign to whom he is accredited. He is exempt from all customs duties and taxes. Legally the properties are exempt from rating. In practice, however, these properties are dealt with in exactly the same way as

Crown properties and a contribution in lieu of rates is made by the Treasury. He possesses freedom from arrest, and freedom in regard to the dispatch and receipt of his mails, and his embassy is regarded as part of the soil of the country which he represents.

A MINISTER has his headquarters at his legation. He is regarded as agent of his sovereign, and, therefore, holds an inferior position. Otherwise he possesses practically the same powers, duties, and privileges as an ambassador. He is a person appointed to represent his own country in some state which is not of sufficient dignity or importance in international law to have an ambassador.

A CHARGÉ D'AFFAIRES is accredited to the Minister of Foreign Affairs in the country in which he resides. He may act temporarily for the Minister or the Ambassador, and can carry on detailed negotiations in connection with matters the principles of which have already been accepted.

A MILITARY ATTACHÉ has a position which varies according to the country concerned. In some instances he reports to his Ambassador or Minister. In others direct to his General Staff.

Diplomatic correspondence is ordinarily confidential, and it is usually a sufficient answer to any questions in Parliament touching foreign relations to say that the information sought cannot be given without detriment to the public service. This seems to imply that the Foreign Office is independent of Parliament, but it is probably true to say that no other department is more constantly under the notice of the members of the Cabinet.

WOMEN IN THE DIPLOMATIC SERVICE. In January, 1934, it was announced that the Foreign Secretary had appointed a Committee under the Chairmanship of Sir Claud Schuster to review the question of the admission of women to the diplomatic and consular service. The Committee reported in April, 1936. The Committee considered that the habits and customs of many countries would create embarrassments for women in the Diplomatic Service, and render such appointments too risky an experiment. With regard to the Consular Service they consider that women would in practice find themselves hampered as compared with men.

The Consular Service

A CONSUL. Whilst a diplomatic agent represents the sovereign, a consul may be said to represent the citizens of the state, and to assist subjects who happen to be in the country to which he is accredited. He is a commercial attaché, who studies the economic

conditions of the country to which he is accredited, reporting the results of his studies to the authorities at home. He points out any new openings for trade, or directions in which existing trade connections may be strengthened. (*See* Department of Overseas Trade (Development and Intelligence), page 115.) The Consular Service includes consuls-general, consuls, vice-consuls, and consular agents. A consul sees to details of ships and shipping, such as taking statements from captains of British ships as to injuries received at sea. He solemnizes or registers marriages when one of the contracting parties is a British subject, and registers the births and deaths of British subjects. He takes oaths and declarations, and performs other functions of a notary and commissioner for oaths usually in matters relating to contracts and trade customs. Being also in touch with the embassy of his country, he receives complaints of British subjects as to any injustice inflicted, and administers the property of such British subjects as die within his district. In certain countries, *e.g.*, China, in which a system of ex-territorial jurisdiction is exercised, he administers justice and punishment to British subjects.

CHAPTER XLIII

NATIONAL DEFENCE

THE COMMITTEE OF IMPERIAL DEFENCE was set up in 1903. It is responsible for organizing the defence of the Empire and for co-ordinating the Navy, Army, Colonial, and Air forces. The membership of this committee is not defined. The Prime Minister, is Chairman and the First Lord of the Admiralty, the Secretary of State concerned, and various permanent heads of departments are summoned as occasion demands.

THE SUPPLY BOARD was reconstituted in accordance with decision made in May, 1935. The duty of the Supply Board is to provide for the expansion of armament production in time of emergency.

A MINISTER FOR THE CO-ORDINATION OF DEFENCE was appointed in March, 1936. He is accommodated in the offices of the Committee of Imperial Defence and able to call on the staff of that organization as well as on special officials of his own.

Board of Admiralty

The British naval forces are controlled by the Board of Admiralty. Unlike the other Boards, it actually sits and is appointed by letters patent under the Great Seal, and is described as "Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Northern Ireland and of the Dominions, etc., beyond the Seas, thereto belonging, and the territories or parts beyond the seas possessed by any subject." The office of Lord High Admiral has been in commission since 1708, with the exception of the year 1827, when for a short period the Duke of Clarence held the post. This Board controls the Royal Navy, the Royal Naval Reserve, and the Royal Naval Volunteer Reserve. It is responsible for the building and manning of ships for the fleets, dockyards, naval victualling and equipment stores; the massing and transport of troops; the appointment, promotion, and pay of all branches of these services.

CONSTITUTION. The work of the Commissioners was re-arranged by the Churchill scheme of 1911, which—as modified during the war—apportioned the work among the members of the Board as follows—

FIRST LORD OF THE ADMIRALTY is a member of Parliament and a Cabinet Minister. He is responsible to Parliament for all

matters connected with the Navy. It is his duty to appoint flag officers and commanders of ships.

FIRST SEA LORD AND CHIEF OF NAVAL STAFF deals with strategical questions, the distribution of the fleets and the discipline of the service.

SECOND SEA LORD AND CHIEF OF NAVAL PERSONNEL deals with recruiting and training and the selection of the lower officers.

THIRD SEA LORD AND CONTROLLER looks after the repairs and construction of ships and ordnance.

FOURTH SEA LORD AND CHIEF OF SUPPLIES AND TRANSPORT controls medical, victualling, and transport arrangements.

DEPUTY CHIEF OF NAVAL STAFF and Assistant Chief of the Naval Staff.

PARLIAMENTARY AND FINANCIAL SECRETARY deals with matters of finance.

CIVIL LORD, who is also a politician, deals with the civil establishments and Greenwich Hospital.

THE PERMANENT SECRETARY deals with the personnel of the Admiralty and routine correspondence, and arranges for co-ordination of policy.

There are numerous Departments including those relating to Mobilization, Hydrographic, Personal Services, Recruiting, Medical, Education, Naval Construction, Engineering, Electrical Engineering, Naval Ordnance, Torpedoes and Mining, Dockyards, Victualling, Greenwich Hospital, Contracts and Purchase, and the Accountant-General.

War Office

The military forces of the kingdom are controlled by the War Office. The Bill of Rights, 1689, provided that the raising or keeping of a standing army within the kingdom in time of peace, unless with the consent of Parliament, is unlawful. This constitutional difficulty was overcome by passing each year a Mutiny Act, which, after 1881, was known as the Army Discipline and Regulation Act. The creation of the Air Force has again altered the title to the Army and Air Force (Annual) Act.

From 1801 till 1854 there was a Secretary of State at War and the Colonies. In 1854 a Secretary of State *for* War was appointed. In 1856 the office of Secretary of State *at* War was abolished. The most important changes in the work of the War Office took place in the first decade of the twentieth century.

THE ARMY COUNCIL. On 6th February, 1904, the Army Council was constituted on the model of the Board of Admiralty, according to the recommendations of the Royal Commission

which had reported on the administration during the South African War. The Army Council consists of the Secretary of State for War, Parliamentary Under-Secretary, four military members, Financial Secretary of the War Office, and a Permanent Under-Secretary.

The work of the Department is apportioned as follows—

THE SECRETARY OF STATE FOR WAR is responsible to the Crown and Parliament for the general policy of the War Office, and he submits recommendations to the Sovereign.

FIRST MILITARY MEMBER is known as the CHIEF OF THE IMPERIAL GENERAL STAFF, who is responsible for the direction of military operations and intelligence, training and education, official publications, mapping, and the administration of Votes for the Service.

SECOND MILITARY MEMBER is the ADJUTANT-GENERAL TO THE FORCES, who is responsible for the provision of the personnel, for the organization and mobilization of units, discipline and military law, medical services, and army schools.

THIRD MILITARY MEMBER is the QUARTERMASTER-GENERAL TO THE FORCES, who is responsible for movements and quartering, supplies and transport, remounts, equipment and ordnance stores, supplies and food, and barrack administration, and who in this respect authorizes and maintains reserves of food and material.

FOURTH MILITARY MEMBER, known as the MASTER-GENERAL OF THE ORDNANCE, ensures a supply of arms and ammunition. During the Great War this branch formed the nucleus of the Ministry of Munitions, which was created in June, 1915.

DIRECTOR-GENERAL OF MUNITIONS PRODUCTION. In July, 1936, the Secretary of State for War announced the appointment of an additional member of the Army Council with the above title.

PARLIAMENTARY UNDER-SECRETARY OF STATE FOR WAR is responsible for the Territorial Army Directorate, the Army Chaplain Department, and for non-effective votes. The non-effective votes are those which are not directly concerned with the fighting strength, viz., the votes for half-pay, retired pay, pensions and civil superannuation, compensation and gratuities.

FINANCIAL SECRETARY OF THE WAR OFFICE is also a politician. He is responsible for the preparation of army estimates, for financial appeals and decisions, for the examination of accounts, and for the final acceptance or refusal of contracts.

PERMANENT UNDER-SECRETARY OF STATE FOR WAR is the Secretary to the Army Council and is responsible for the internal administration of the office, and correspondence with other departments.

The War Office is divided into Departments including those of the Military Secretary, Permanent Under-Secretary, Chaplains Branch, and of the four Military members.

In the organization of the British Army two clear conceptions have to be borne in mind. The first duty of the Army must be a defensive one—to render the country inviolable from foreign aggression. The soundest defence, however, lies in attack, and the determination to keep wars, if inevitable, on foreign soil, together with the necessity of maintaining garrisons abroad, has caused a concentration on the provision of a highly trained professional Army for foreign service. Our insular position and the efficiency of the Navy have, therefore, left the defensive function somewhat subordinate to the offensive one.

There are no means by which an engagement between a soldier and the Crown can be enforced (*Court of Appeal*, 1933, *in re Colonel J. W. Kynaston*); see also *Gedley* v. *Palmerston*, 1822; *Dunn* v. *The Queen*, and *Denning* v. *Secretary of State for India in Council*, 1920).

THE TERRITORIAL AND RESERVE FORCES ACT, 1907, divided the Army into the Regulars and Territorials. The Regulars constitute the First Line; they include the Reserve and Special Reserve. The Territorials were the former Yeomanry and Volunteers; they constitute the Second Line. The First Line is divided into Garrison and Field Forces, and Expeditionary Forces. The Garrison and Field Forces are for garrison work in Egypt, India, South Africa, and other parts of the Empire. The remainder of the Regular Army, under the two battalion system, is retained at home. It fulfils a dual rôle, one battalion being overseas, the home battalion operates through its depot to supply men to make up any wastage in the overseas battalion. The units serving at home constitute the Expeditionary Force and supply wastage in the field, and for this purpose they are maintained at full fighting strength. The ordinary Infantry Battalion on home service consists of about 500, mostly youths of 18 and 19 years of age. On mobilization the Reserves take their places in the ranks and constitute the real Expeditionary Force of 1,000 men per battalion.

Until the passing of the Military Service Acts, during the war, the Second Line was for home defence only, without any obligation to serve abroad, but volunteers would be accepted either individually or as a unit. This group comprises the Reserves and the Territorial Forces. Soldiers, on the completion of their Colour Service, nominally pass to the Reserve, and are liable for duty only in the event of mobilization. Special Reserve sections exist of officers and men who are paid retainers, mostly in the technical branches of the service. The County Territorial Associations have

been created for the purpose of the maintenance of barrack accommodation of the Territorial Force, and for the administration of pay and clothing, and, subsequently, of separation allowances of men in territorial battalions.

Air Ministry

To provide for the growing importance of aircraft in warfare, the Air Council was established in December, 1917. It unites the previously separate forces of the Royal Naval Air Service and the Royal Flying Corps.

AIR COUNCIL The composition and duties of the Air Council are defined by Order in Council dated the 29th March, 1935. The President of the Air Council is one of His Majesty's Principal Secretaries of State.

The organization of the departments of the Air Members of the Air Council is as follows—

Chief of the Air Staff, including Directorate of Operations and Intelligence; Directorate of Staff Duties, Signals Branch. *Air Member for Personnel* includes the Directorate of Postings; the Directorate of Personal Services; and Directorate of Training. *Air Member for Research and Development* includes the Joint Directorate of Scientific Research and Technical Development, Directorate of Aeronautical Inspection, and Deputy Directorate for Repair and Maintenance.

Air Member for Supply and Organization has duties as indicated by the title of his office including the Directorate of Equipment

Under-Secretary of State for Air and Vice-President of the Air Council is responsible for the finance and contracts of the Air Force, for the acquisition and administration of lands required for the purposes of the Air Force.

The Secretary of the Air Ministry is charged with the interior economy of the department and the preparation of all official communications of the Council, and with such other duties as the Secretary of State may from time to time assign to him.

Civil aviation is under the control of the Director of Civil Aviation at the Air Ministry and is considered on page 138.

Air Transport

The Air Navigation Act, 1920, has encouraged the development of municipal aerodromes. Imperial Airways, Ltd., have been encouraged by the State to enlarge the spheres of their activities, and inter-communication with the several continents is fostered by the Air Mail Services of the Post Office.

CHAPTER XLIV

INTERNATIONAL LAW

LAW may be National (*i.e.*, relating to a nation or state) or international. The term " International Law " is due to Jeremy Bentham.

INTERNATIONAL LAW consists of rules to control relations which have a legal rather than a moral character.

International Law is composed of two distinct elements—the natural and the conventional. It is the creation of moralists moulded by the acumen of jurists and the wisdom of statesmen.

NATURAL INTERNATIONAL LAW is the Law of Nature. It is common to all nations, for it embraces those principles which are implanted by God in the heart and mind of every man, of whatever race or clime. It is characterized in a general sense as a law because its observance leads to peace and happiness, and its disregard leads to war and misery.

CONVENTIONAL INTERNATIONAL LAW is that which results from express obligations undertaken by States in the shape of treaties, agreements, declarations, and also from precedents and leading cases establishing the customary practices of States. All civilized nations agree that they are bound by these principles. They are, however, not infrequently broken. The sources of its strength are three—

(1) A regard for national reputation as affected by international public opinion.

(2) An unwillingness to incur risk of war for any but a paramount national interest.

(3) The realization by each nation that the convenience of settled rules is cheaply purchased, in the majority of cases, by the habit of individual compliance.

CONVENTIONS. A large body of International Law with reference to the conduct of warfare has been called into existence by means of general conventions or declarations, *e.g.*;

1. *With reference to War whether on Land or Sea.* The declaration of St. Petersburg, 1868, as to explosive bullets. The three Hague Declarations of 1899–1907 as to projectiles from balloons, projectiles spreading dangerous gases and expanding bullets.

The Hague Convention No. iii of 1907 as to Declaration of War.

2. *With reference only to War on Land.* The Geneva Convention of 1906 as to the sick and wounded.

The Hague Convention Nos. iv and v of 1907 as to the conduct of warfare and as to neutrals.

3. *With reference only to War at Sea.* The Declaration of Paris of 1856 (to which the United States of America is the only important power which has not become a party) as to privateering, combination of enemy and neutral property, and blockades.

The Hague Convention of 1907.

No. vi as to the enemy merchant vessels at outbreak of war.
,, vii as to conversion of merchantmen into warships.
,, viii as to mines.
,, ix as to naval bombardments.
,, x as to sick and wounded.
,, xi as to captures.
,, xii as to an International Prize Court.
,, xiii as to neutrals.

The Declaration of London, 1909, as to blockade, contraband, hostile assistance, destruction of prizes, change of flag, enemy character, convoy, resistance, and compensation.

This Declaration, purporting to codify on many points the laws of naval warfare and so to facilitate the working of the proposed International Prize Court when set up, has not been ratified by any power.

War

War is primarily an armed contention between States. States are aggregations of men manifesting themselves and acting through individuals; hence war establishes secondarily a hostile relation between States and individuals.

COMMENCEMENT OF WAR. Formal declaration has ceased to be necessary, but as a state of war imposes duties upon neutrals, and as responsibility for their exercise can arise only after due notification to neutral powers that such a state of war exists, States declaring war usually publish a manifesto within their own territory giving notice of outbreak of hostilities.

The commencement of war immediately results in depriving a citizen of the right to recover debts from the enemy subjects, and partnerships with them are immediately dissolved. Speaking generally, intercourse with enemy subjects is permitted only under exceptional circumstances. Enemy property may be appropriated at all times and in all places, but subject to certain exceptions which have been admitted in the more tolerant practice of modern warfare.

Conquest does not disturb the private rights of property of the citizens of conquered territory.

ENEMY PROPERTY may be divided into three classes—

(1) Hostile State property on land.
(2) Hostile private property on land.
(3) Hostile property (public and private) at sea.

It may be said that a belligerent can seize or destroy enemy property under the following circumstances, viz.—

(*a*) Public property of the enemy if found within a belligerent's own territory or if it can be carried off to it.
(*b*) Private property of enemy subjects on land if directly useful to either belligerent.
(*c*) Public and private property of the enemy at sea except covered by a neutral flag.

ENEMY SHIPS. All ships belonging to enemy persons are considered hostile in time of war.

The ownership of a vessel, however, is not the only element determining its character. Every ship carries a national flag, the right to which is regulated by different rules in different countries. None but British-owned ships may fly the Union Jack, while the Colombian flag may be carried by ships manned and owned by foreigners through simple registration in Colombia. According to the English rule all vessels sailing under the flag and pass or licence of the enemy, by whomsoever owned, are good prizes. It will make no difference whether they are owned in part or entirely by neutral subjects. This may cause hardship, *e.g.*, Switzerland, which has no maritime flag of its own.

ENEMY SHIPS AND CARGOES. Enemy ships and cargoes and such neutral ships and goods as are considered hostile are exposed to capture, and in some cases to destruction in time of war. Destruction may be conducted on two different principles—

(1) A belligerent weak on the sea may order its cruisers to destroy systematically all their captures and to bring in no prizes.
(2) Enemy ships may be destroyed under certain circumstances when a belligerent could not reasonably be expected to take them into port.

ENEMY CARGO. The general rule, as in the case of ships, is that the character of the cargo depends on the character of its owner. The consignee is considered owner as soon as the goods are put on board. In the converse case, when the consignor is an enemy, the law as understood in England is again partial to the belligerent.

ENEMY GOODS IN NEUTRAL SHIPS. Under the Declaration of Paris, 1856, "the neutral covers enemy merchandise except contraband of war."

NEUTRAL GOODS IN ENEMY SHIPS. The Declaration of Paris grants immunity from capture to neutral goods found in belligerent vessels.

EXCEPTIONS TO THE RULE OF CAPTURE. Convention (VI) of the last Hague Conference now allows a certain number of days to elapse after the declaration of war before enemy ships in a belligerent's waters are taken.

1. Vessels engaged in religious, scientific, and philanthropic missions (Art. 4 of Convention (xi) of the last Hague Conference). On the ground of their general usefulness ships and boats belonging to pilots and also vessels attached to lighthouses are exempt from seizure.
2. Cartel ships—ships engaged in the carriage of exchanged prisoners—whether they have prisoners on board or not.
3. Hospital ships.
4. Personal effects of passengers and crews.
5. Fishing vessels. Ships fishing in the deep sea are liable to seizure, but coast-fishing vessels are immune. As a result of their use as mine sweepers during the Great War this immunity is not likely to continue in the future.
6. Shipwrecked vessels and those driven into hostile ports under stress of weather or from want of provisions have sometimes been allowed to depart unmolested. This depends, however, upon the belligerent.
7. The Post. Postal correspondence of neutrals or belligerents, whatever its official or private character may be, found upon the high seas on board a neutral or enemy ship is inviolable. If the ship is detained the correspondence is forwarded by the captor with the least possible delay.

CONTRABAND. Contraband at first signified those articles, the importation of which into a country was publicly prohibited. It now denotes those articles which a neutral cannot carry into the country of a belligerent without incurring the risk of confiscation by another belligerent.

What is contraband has always been a matter of uncertainty, and the list of contraband articles has varied greatly. Whether any given article should be treated as contraband is entirely a question for the belligerent government and its Prize Court. While continental opinion and practice favour a hard-and-fast list of contraband articles, comprising only such as are already suited or can readily be adapted for use in operations of war,

English and American opinion and practice favour a longer list and one capable of being from time to time extended to meet the special exigencies of the war.

THE SINKING OF NEUTRAL PRIZES. There is no established rule of International Law which absolutely forbids, under any circumstances, the sinking of a neutral prize. It is much to be desired that the practice should be by future international agreement absolutely forbidden. In any case, the owner of neutral property, not proved to be good prize, is entitled to the fullest compensation for his loss.

RIGHTS TO ENEMY PROPERTY. The property of belligerents is often much mixed up with that of neutrals. It is the universal practice for the former to guard the interests of the latter, by requiring the captors to bring their prizes into port for adjudication by a tribunal competent to decide whether the captured vessel and its cargo are in fact wholly or only in part the property of the enemy.

PRIZE. All prizes taken in war belong to the Crown, but for a century and a half the Crown has been in the habit of granting the prize, after condemnation, to the captors.

DISTRIBUTION OF PRIZE. The whole of the ship's crew share in the prize, notwithstanding that they might not all have been on board at the time of the capture, or that the prize might have been taken out of sight of the ship and at a great distance from it by the ship's tender or by a boat's crew dispatched from the ship.

INTERNATIONAL PRIZE COURT. As long as nations hold widely different views on many points of prize law it cannot be expected that they should agree beforehand that, when belligerents, they will leave it to a board of arbitrators to say which of several competing rules shall be applied to any given case of capture. A complete body of International Law, by which States have agreed to be bound, must necessarily precede the establishment of a mixed Court by which the law is to be interpreted. The matter was discussed at the Hague Conference in 1907, and on 27th February, 1908, the British Government addressed a circular to the great maritime Powers which proposed that another Conference should meet in London in the autumn of the year with "the object of arriving at an agreement as to what are the generally recognized principles of international law, and of then formulating the rules which in the absence of a special treaty provision applicable to a particular case, the Court should observe in dealing with appeals brought before it for decision."

Declaration of London

In response to this invitation delegates from ten principal maritime States assembled at the Foreign Office on 4th December, 1908, and after discussing the topics to which their attention was directed, viz., contraband, blockade, continuous voyage, destruction of neutral prizes, unneutral service, conversion of merchant ships into warships on the high seas, transfer to a neutral flag, nationality or domicile as a test of enemy property, signed on 26th February, 1909, the Declaration of London.

Articles 22-44 of the Declaration constitute a fairly complete Code of the law of contraband. Article 65 of the Declaration provides that "the provisions of the present Declaration form an indivisible whole." The Declaration has not been ratified by any power.

CHAPTER XLV

THE LEAGUE OF NATIONS

THE LEAGUE OF NATIONS has been aptly defined by Professor Vinogradoff as "a super-parliament." The idea of a League of Perpetual Peace has a life of three centuries behind it. It began with the Duc de Sully, and was kept alive by William Penn, the Abbé de Saint-Pierre, Rousseau, and Kant.

If people desire war they must be prepared to meet the necessary taxation. On economic grounds alone the problem must be solved. In 1871 Gladstone enunciated the principle of the enthronement of Right, while Bismarck in Germany stood for the enthronement of Might. For fifty years the policy of Bismarck prevailed, and to-day we suffer the consequences.

PROPOSALS. Disputes are divided into two classes—

(*a*) Justiciable disputes—which may be best settled by legal process through an International Court of Arbitration.

(*b*) Non-justiciable disputes. These larger issues "affecting the honour and vital interests" of a nation which have usually been excepted from arbitration treaties and clearly do not admit of settlement by legal methods since they belong to the domain of policy in which no fixed principles are universally recognized. These would be submitted to a Council of Conciliation.

A LEAGUE OF PEACE must answer two tests—

(1) It must be so composed that in normal times it will assure to all its members such a prospect of fair decisions in disputes and such a chance of effecting reasonable changes in the world when they are due, that war will be unnecessary.

(2) It must be so composed that there will be in every probable contingency an available superiority of military and naval strength at the command of the League if any member of it should resort to aggression.

FIRST HAGUE CONFERENCE, 1899, was held on the invitation of the Czar of Russia. It was followed by the Second in 1907. The Conference of 1907 resulted in the Declaration of London. After the Great War, public opinion in all countries was strongly in favour of some movement to secure lasting peace.

When the League can exercise an influence in the internal management of the affairs of a State it must prove a fetter upon *de facto* Parliamentary sovereignty (*Chalmers and Asquith*). At meetings of the Assembly our Dominions can oppose our interests.

LEAGUE OF NATIONS COVENANT was finally approved by a full session of the Peace Conference in Paris on 28th April, 1919. The main object of the proposal is the prevention of all future wars, or, at least, of as many as possible. The proposal would, however, have a positive as well as a negative result. Proposals for a League of Nations proceed upon the assumption that nothing less than a powerful international combination can hope to prevent future wars.

The Covenant, which is its Charter, contains twenty-six Articles and an Annex, and begins with the following words—

Part I. The Covenant of the League of Nations—

The High Contracting Parties,

in order to promote international co-operation and to achieve international peace and security,

by the acceptance of obligations not to resort to war ;

by the prescription of open, just, and honourable relations between nations ;

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments ; and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

agree to this Covenant of the League of Nations.

The Covenant of the League contains fundamental clauses on the prevention and settlement of disputes. These clauses bind nations who are members of the League not to employ force for the settlement of a dispute until they have first submitted it to the League of Nations (or to arbitrators or to Judges), waited at least six months for the award or decision, and then allowed at least three more months to elapse.

An Annex in two parts gives—

(1) Original members of the League of Nations—

Signatories of the Treaty of Peace—U.S. of America, Belgium, Bolivia, Brazil, British Empire (Canada, Australia, South Africa, New Zealand), India, China, Cuba, Czecho-Slovakia, Ecuador, France, Greece, Guatemala, Haiti, Hedjaz, Honduras, Italy, Japan, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Rumania, Serbia, Siam, Uruguay.

(2) States invited to accede to the Covenant—

Argentine Republic, Chili, Colombia, Denmark, Netherlands, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, Venezuela.

In 1928 there were 55 Members of the League, including the following British Empire members: Australia, Canada, Irish Free State, New Zealand, and South Africa. Germany was admitted a member on 8th September, 1926, but gave notice of

withdrawal in October, 1933. Japan also gave notice at the same time. Brazil was admitted in June, 1926, and subsequently gave the necessary two years' notice of intention to withdraw from the League. Spain withdrew her notice in 1928.

The following States are not members of the League (1935)—

United States of America, Egypt, Brazil, Afghanistan, Ecuador, Mexico, Turkey, the Hedjaz and other Arab States

Any fully self-governing state, dominion, or colony not named in the annex may become a member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military and naval forces and armaments.

Withdrawals. A two years' notice of withdrawal is provided for should a state wish to withdraw from the League. Germany withdrew from the League in 1933. Costa Rica has been a member, but withdrew on the ground of expense Paraguay resigned in 1935. Guatemala in 1936.

THE ORGANS OF THE LEAGUE are—

(1) *Council* has been increased to six permanent members, viz.: Great Britain, France, Italy, Belgium, Germany, and Japan, and nine other non-permanent members elected annually. The Council may, with the approval of the majority of the Assembly, appoint new permanent and non-permanent members. There is now a system of rotation, whereby one-third of the non-permanent members retire annually. Norway has proposed the election of the non-permanent members by proportional representation, and the proposal met with considerable support. The decisions of the Council are not in the nature of Orders, but are issued as recommendations. It must meet once every year and as occasion demands.

(2) *Assembly.* It meets annually at Geneva on the first Monday in September, or as required. Each member state has three representatives, but only one vote. Decisions of the Assembly are by unanimous vote, except where provided otherwise by the Covenant, or by Peace Treaties. The six principal Committees of the Assembly are: (1) Juridical, (2) Technical Organization, (3) Disarmament, (4) League Finance, (5) Social Questions, (6) Political Questions and Admission of New Members.

(3) *Secretariat* is formed by various departments which deal with the various interests of the League. It is composed of nationals of nearly all Member States. It is a permanent organ of the League. The principal official is the Secretary-General.

INTERNATIONAL LABOUR CONFERENCE. The Treaty of Peace with Germany gives power to the League of Nations to create an

International Labour Organization for the purpose of securing better labour conditions throughout the world, and this organization takes the form of an International Labour Conference which meets annually. To this Conference each state which is a member of the League of Nations has power to send four delegates, two representing the Government, one representing labour, to be chosen in agreement with the trade union organizations, and one representing the employers, to be chosen in agreement with the employers' organizations. Each representative has the right to vote independently. The Conference has power to pass Draft Conventions, and also to make recommendations.

Draft Conventions passed by a two-thirds majority must be laid before the legislature of each State which is a member of the Conference, and, if ratified by that authority, must be passed into law and carried into effect.

International Labour Office. The International Labour Conference has a permanent International Labour Office, created in 1920, controlled by a body of twenty-four members, of whom six are elected by the labour representatives and six by the employers. This body has power to initiate measures to be brought before the Conference, in addition to its function of collecting and circulating information. The main object is to bring up the standard of labour in the less advanced states to the level of the standard in countries where greater progress has been made. Eight International Commissions have been set up to assist the International Labour Office in its work.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE sits at the Hague It consists of 11 Judges and 4 Deputy Judges chosen for their international reputation as high legal and moral authorities. The Judges and Deputy Judges are elected jointly by the Council and the Assembly of the League for a term of nine years. The Permanent Court acts both as a bench of judges to answer points of law, and as a Court competent to hear and determine disputes of an international character which the parties thereto submit to it. It deals by means of opinions and judgments with all disputes regarding International Law, breaches of International obligations, and the interpretation of treaties.

MANDATES, *vide* Article 22 of the Covenant. Character of Mandates differs according to the stage of development of the people to whom it is applied.

Class A. Territories formerly belonging to the Ottoman Empire; *e.g.*, Mesopotamia (now Iraq) and Palestine allotted to Great Britain, Syria and the Lebanon to France.

Class B. Formerly territories of the German Empire; *e.g.*,

portions of East Africa, Togoland, and the Cameroons allotted to Great Britain, France, and Belgium as Mandatories.

Class C. Formerly territories of the German Empire. Possessions in the Pacific south of the Equator (except Nauru and Samoa) allotted to Australia as Mandatory. North of the Equator allotted to Japan; Samoa allotted to New Zealand; Nauru allotted to British Empire; South-west Africa allotted to the Union of South Africa.

Note the effect of the dispute between China and Japan relative to Manchuria in its effect on the prestige of the League. This has been followed by the failure of Sanctions in connection with the Abyssinia-Italian Dispute, 1935-36.

The Operation of Sanctions

The serious clash between Italian native troops and Abyssinians at Wal Wal, near the unmarked Somaliland frontier on 5th December, 1934, was the immediate cause of the Italo-Abyssinian dispute. About 60 Italian native soldiers and 107 Abyssinians were killed.

Abyssinia asked for arbitration. Italy refused and demanded apologies, a salute to the Italian flag at Wal Wal, punishment for the offenders and £20,000 compensation.

Continued refusal on the part of Italy to arbitrate led Abyssinia on 3rd January, 1935, to appeal to the League of Nations under Article 11 of the Covenant.

On 19th January, 1935, the appeal was suspended, both Governments agreeing to seek a settlement by means of direct negotiations in the spirit of their Treaty of Friendship of 1928. Nothing came of these "direct negotiations."

In the first week of February, 1935, Italy began the military measures that gradually developed to enormous proportions.

In March, 1935, Abyssinia asked the League Council to take up her dispute with Italy, and appealed to the League under Article 15 of the Covenant which provides for the treatment of disputes likely to lead to a rupture, which had not been submitted to arbitration or judicial settlement.

Towards the end of April, 1935, the Italian and Abyssinian Governments agreed to a Commission of Conciliation, but difficulties arose about the scope of the inquiry. On 24th May, 1935, Italy accepted at Geneva proposals that had been put forward at the Council by Mr. Eden, the British delegate, and M. Laval, the French delegate, who acted as joint rapporteurs.

It was arranged that conciliation under the 1928 Treaty should begin with four arbitrators and that the Council should meet again if a settlement had not taken place by 25th August, 1935.

The setting up of the conciliation Commission however had no effect on the Italian military measures which proceeded more and more vigorously

On 25th June, 1935, Mr. Eden had conversations with Mussolini in Rome. On the instructions of the British Government he made a tentative suggestion that Britain would be willing to cede a strip of territory in British Somaliland to Abyssinia—which would give her access to the sea—as compensation for concessions to Italy. This proposal was rejected.

On 9th July, 1935, the Conciliation Commission reached a deadlock. In August, 1935, the League Council met again, and it was arranged that the Commission should resume its task on the Wal Wal incident with a fifth arbitrator, and that Britain, France, and Italy—the three parties to the agreement of 1906—should enter at once into conversations with a view to a settlement of the larger differences, and that the Council should meet again on 4th September, 1935, to consider the whole situation.

The Three-Power Conversations began at Paris on 16th August, 1935, and at once encountered difficulties through the reluctance of the Italian delegate to make a full statement of the Italian claim. By 18th August the conversations had broken down

On 4th September, 1935, the Council of the League met and received from Mr. Eden a report on the failure of the Three-Power Conversations. The Conciliation Commission of Five reported, as a unanimous conclusion, that neither the Italian Government, nor the Abyssinian Government could be held responsible for the Wal Wal incident.

On 6th September, 1935, a Conciliation Committee of representatives of Great Britain, France, Poland, Spain, and Turkey was appointed by the League Council to "inquire into all aspects of the relations between Italy and Ethiopia, with a view to finding a peaceful settlement."

On 18th September, 1935, the Committee of Five completed its main task by presenting to the Italian and Abyssinian representatives at Geneva a peace plan which embodied proposals for the re-organization of Abyssinia. Italy rejected this plan, and Abyssinia accepted it.

On 26th September the Council of the League formally applied the procedure of the Covenant to the dispute by adopting Paragraph 4 of Article 15 of the Covenant. This meant that the Council assumed the responsibility of making and publishing a report "containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto."

The drafting of the Report was entrusted to a Committee of Thirteen, consisting of the whole of the Council except the parties to the dispute.

On 2nd October, 1935, the Italians crossed the frontier On 7th October, 1935, the Council of the League unanimously adopted the report of the Committee of Six and found Italy guilty of having had recourse to war against a fellow-member in disregard of the Covenant, and for the first time in its history decided to apply the sanctions Article.

On 9th October, 1935, when the Assembly of the League met to register its verdict on the findings of the Committee of Six that Italy had committed a breach of the Covenant, the representatives of Austria and Hungary announced the refusal of their Governments to participate in economic sanctions as their countries were bound by ties of friendship and vital economic interest to Italy.

On 10th October, 1935, fifty-one nations out of fifty-four represented registered a decision by the Assembly of the League that Italy had been guilty of violation of the Covenant by attacking Abyssinia and pledged itself to the use of sanctions against her. Austria and Hungary were the only dissentients and Albania reserved its declaration.

On 3rd March, 1936, the Committee of Thirteen met at Geneva and agreed on the terms of the League's appeal to Italy and Abyssinia for peace.

On 20th April, 1936, the Council of the League adopted a resolution which addressed to Italy "a supreme appeal to bring to the solution of her conflict with Abyssinia the spirit which the League expects from a founder member," and reminded Italy and Abyssinia that they were bound by the convention banning the use of poison gas in war.

On 3rd May, 1936, the Emperor of Abyssinia arrived at Jibute (French Somaliland) from his capital Addis Ababa.

On 5th May, 1936, Marshal Badoglio entered Addis Ababa, at the head of a large force of Italian troops.

On 10th May, 1936, an Italian delegate handed to the Secretary General of the League of Nations a copy of the decree of the annexation of Abyssinia.

On 11th May, 1936, Baron Aloisi, the Italian delegate walked out of the League Council chamber. After he had gone, the Council decided to keep the Abyssinian question on the Agenda

On 12th May, 1936, the Council of the League decided to postpone consideration of the question for a month, and that meantime there should no relaxation of sanctions.

On 9th June, 1936, the Foreign Secretary announced in the

House of Commons that the British Government had decided to raise sanctions because there was no longer any utility in continuing these measures as a means of pressure upon Italy.

On 30th June, 1936, the Emperor of Abyssinia addressed in person the League of Nations. "I have come to Geneva on the most painful duty that the head of a State has ever had to fulfil. What reply have I to take back to my people?"

On 15th July, 1936, sanctions against Italy were raised.

On the other hand there was the satisfactory settlement in 1933 of such matters as the Anglo-Persian Oil Dispute.

CHAPTER XLVI

INTERNATIONAL CONFERENCES AND AGREEMENTS

The Kellogg Pact

ON 20th June, 1927, M Briand, on behalf of the French Government, proposed to the United States Government a bi-lateral treaty by which the two states would agree to renounce war as an instrument of national policy towards each other.

Replying, on 28th December, 1927, Mr. Kellogg, Secretary of State, expressed agreement of the United States Government in the proposed formal renunciation of war as an instrument of national policy, but suggested, instead of a bi-lateral treaty, a multi-lateral treaty between the principal Powers of the world, open to adherence by any and all nations.

France agreed to this in principle, but wished to limit such multi-lateral treaty to wars of aggression.

Mr. Kellogg remained firm, however, and on 13th April, 1928, submitted to the Governments concerned a draft treaty for the outlawry of war as between the United States, France, Great Britain, Germany, Italy and Japan.

After the preamble, it consisted of three articles only, viz.—

1. That the high contracting parties solemnly declare, in the name of their respective peoples, that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relation with one another.

2. The high contracting parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

3. Provides for ratification by the high contracting parties in accordance with their respective constitutional requirements, and that the treaty shall remain open for as long as may be necessary for adherence by all the other Powers of the world.

France drafted and sent to the same Powers an alternative treaty, retaining to the parties their "legitimate right of defence within the limits of existing treaties," and condemning war "as an instrument of personal, spontaneous, and independent political action in which they take the initiative."

The German Government expressed agreement with the Kellogg proposal on 27th April, 1928.

On behalf of "His Majesty's Government in Great Britain," the Foreign Secretary replied on 19th May, 1928 (Cmd. 3109), that they were wholly in accord with the aim of the United States Government to embody in the treaty a broad statement of principle to proclaim without restriction or qualification that war shall not be used as an instrument of national policy. After a reference to the French note, it was pointed out that for this country respect for obligations arising out of the Covenant of the League of Nations and out of the Locarno Treaty was fundamental, also that there were certain regions of the world the welfare and integrity of which constituted a special and vital interest for our peace and safety, and that their protection from attack was to the British Empire a measure of self-defence. The new treaty was accepted by H.M. Government on the distinct understanding that it did not prejudice their freedom of action in this respect. After this critical examination, Sir Austen Chamberlain stated that H.M. Government in Great Britain "find nothing in their existing commitments which prevents their hearty co-operation in this new movement for strengthening the foundation of peace. They will gladly co-operate in the conclusion of such a pact, and are ready to engage with the United States Government in the negotiations which are necessary for this purpose." Whilst they could not, he said, undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India, "they had been in communication with those Governments, and they are all in cordial agreement with the general principle of the proposed treaty."

On the 19th July, 1928, the Foreign Secretary announced the acceptance, on behalf of the British Empire, of the United States proposed Peace Pact.

On the 27th August, 1928, the Pact against War was signed at the French Foreign Office in Paris. The signatories of the Pact were France, United States, Great Britain and India, Italy, Australia, Canada, South Africa, New Zealand, Irish Free State, Germany, Belgium, Japan, Poland, and Czecho-Slovakia.

Treaty of London

A Five-Power Naval Conference was held in London and terminated in April, 1930.

(1) The first part of the Treaty is concerned with the agreement to postpone until after 1936 the replacement of capital ships as laid down by the Washington Treaty.

(2) The second part of the Treaty includes new rules which have been adopted for the more humane use of the submarine in war time and defines the position of the merchant vessel in case of attack.

(3) The third part of the Treaty incorporates an agreement for limitation of tonnage between Great Britain, the United States, and Japan. This may be signed by France and Italy at a later stage.

THE FOUR-POWER PACT between Great Britain, France, Germany, and Italy was signed in Rome on 16th July, 1933. It is a contract of collaboration between the four Great Powers for ten years.

WASHINGTON NAVAL TREATY. On 31st December, 1934, Japan gave notice to end the Washington Naval Treaty in 1936, with its ratio of 5-5-3 for Great Britain, United States of America, and Japan respectively.

Disarmament Conference

This Conference, under the chairmanship of the late Right Hon. Arthur Henderson, M.P., held protracted sittings from 1931. On 8th June, 1933, the Conference adjourned, and Mr. Henderson had private interchange of views with the heads of delegations, being authorized to get into touch with the Governments concerned to try and clear up outstanding differences before the next meeting. He visited the various capitals in an attempt to harmonize conflicting views but without success.

In October, 1933, Germany gave notice of her intention to withdraw from the Conference and from the League of Nations.

On 29th May, 1934, the Conference met for a general discussion opened by Mr. Henderson, who stressed the dangers of failure and appealed for a spirit of compromise. The French attitude was that security should precede disarmament. On 8th June, 1934, the Conference unanimously appointed a Committee on Security with a view to the conclusion of regional pacts outside the Conference. It also instructed the Committee on Manufacture and Trade in Arms, and the Air Committee to resume work. At a meeting of the Bureau of the Conference in November, 1934, it was decided that an attempt should be made to reach agreement on certain subjects. At this meeting the United States Delegation put forward a Draft Convention.

On 20th April, 1932, the Conference unanimously adopted the Resolution on Qualitative Disarmament which was moved by Sir John Simon. Technical Committees were set up to consider the various armaments concerned, but reached no definite conclusions.

On 17th November, 1932, the British Foreign Secretary laid before the Conference two points—

(1) The object of the Disarmament Conference is to bring about the maximum of quantitative disarmament that can be

generally agreed, not to authorize in the name of equality an increase of armed strength.

(2) The full realization in practice of the principles of equality cannot be achieved all at once Confidence in the further application of the principle will grow as it is seen that the peace of the world has been made more secure by taking the first step

On 16th March, 1933, in an attempt to save the Conference, the British Prime Minister, Mr Ramsay MacDonald, outlined at Geneva the British plan by seeking definite agreements on various suggestions which had already met with approval in principle.

The Anglo-French Communiqué, 1935

With the disappearance of the problem of the Saar in January, 1935, it was felt that the time was ripe for a further attempt to get an agreement on the remaining problems of Europe. After conversations in London a Communiqué was issued on 3rd February, 1935, which instanced five objects which it was especially desirable to attain—

(1) An Eastern Pact of Mutual Assistance,

(2) A Pact for Central Europe;

(3) An Agreement with regard to Armament to replace Part V of the Treaty of Versailles;

(4) The return of Germany to the League of Nations, and

(5) An Air Pact for Western Europe.

Immediately the German Government sent an invitation to the British Government, asking that a British Minister should come to Berlin to discuss the five points Sir John Simon decided to go himself, and arrangements had been made for a meeting on 8th March, when the British Government was informed that Herr Hitler had caught a severe cold It has been suggested that the real reason for the German action was the publication on 1st March over the signature of the Prime Minister of a White Paper recommending increased expenditure for National Defence

On 16th March, 1935, the German Government promulgated the German Military Law of Re-armament in breach of Part V of the Treaty of Versailles Conversation took place between Sir John Simon and Herr Hitler at Berlin on 24th March, 1935, when the German claims were laid down With regard to the return of Germany to the League of Nations, Herr Hitler said she could not consider this unless she had complete equality including colonies.

On 21st May, 1935, Herr Hitler made a pronouncement on Foreign Policy in which he reaffirmed Germany's adherence to the Locarno Treaty and acceptance of the principle of Qualitative Disarmament.

German Occupation of the Rhineland and After

At dawn on 7th March, 1936, German troops marched into the Rhineland in violation of the Locarno Treaty. This action was declared by Germany, in a memorandum to the Powers and in a speech made by Herr Hitler to the Reichstag, to be justified by the conclusion of the France-Soviet Pact, which, it was asserted, nullified the Treaty. In announcing her decision to rearm the Rhineland, Germany made the following proposals to replace the abandoned treaty—

1. To negotiate with France and Belgium for a mutual demilitarized zone under conditions of complete parity.
2. To assure peace with France and Belgium by a twenty-five years' non-aggression pact.
3. To invite Britain and Italy to sign this pact as guarantors.
4. To include Holland in the treaty system if she desires.
5. To conclude an Air Pact with the Western Powers in order to obviate the danger of a sudden attack.
6. To conclude with Eastern States (including Lithuania but not Russia) non-aggression pacts.
7. To rejoin the League of Nations.

Liberation of the German people from the "slavery" of Versailles was the promise on which Hitler rose to power. In the course of four years he has fulfilled his promise with three decisive acts. Each was accomplished unilaterally, was proclaimed with a dramatic flourish, and was declared to be justified by some action on the part of the other Powers.

1. 14th October, 1933, Germany left the Disarmament Conference and resigned from the League. Pretext: the substitution by Sir John Simon for the MacDonald disarmament plan of a new plan which was to delay the disarmament of the other Powers for four years.
2. 16th March, 1935, Germany restored conscription. Pretext: failure of the other Powers to disarm, coupled with the extension of the period of military service in France and the increase of the Soviet army to 101 divisions.
3. 8th March, 1936, German troops reoccupied the Rhineland, and Herr Hitler denounced Locarno. Pretext; violation of the spirit of Locarno by the Franco-Soviet Pact.

On each occasion it had been clear that the coup was long prepared, and no great importance has ever been attached outside Germany to the specific reason advanced to justify it.

The Franco-Soviet Pact

The excuse for the latest and most spectacular of the three moves, namely, the Franco-Soviet Pact—has been the subject of discussion for many months past. The pact was signed in Paris

on 2nd May, 1935, and almost immediately afterwards a semi-official protest against it was issued in Berlin. Germany's general objection was, and still is, that the pact is aimed at herself, and prevents a union of the Western Powers against Bolshevism.

The London Naval Treaty, 1936

The London Naval Treaty which was signed on the 25th March, 1936, takes the place of the Washington Treaty of 1922 and the London Naval Treaty of 1930, both of which came to an end in 1936. It was the result of a Conference which opened in London in December, 1935, attended by experts representing Great Britain and the Dominions, the United States, Japan, France and Italy. Signatures were appended by delegates from the United States, France, and the countries of the British Commonwealth with the exception of the Irish Free State and South Africa. The treaty remains open to signature by Japan and Italy. There will be a parallel agreement with Germany.

Treaty of Locarno

By Article 2 of the Treaty of Locarno, Germany and Belgium and Germany and France "mutually undertake that they will in no case attack or invade each other or resort to war against each other." This stipulation shall not, however, apply in case of a violation of this paragraph or of a "flagrant breach of Articles 42 or 43 of the Treaty of Versailles, if such breach constitutes an unprovoked act of aggression, and by reason of the assembly of armed forces in the demilitarized zone immediate action is necessary"

THE DEMILITARIZED ZONE. Articles 42 and 43 of the Versailles Treaty are as follows—

Article 42. "Germany is forbidden to maintain or construct any fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometres to the east of the Rhine."

Article 43. "In the area defined above, the maintenance and the assembly of armed forces either permanently or temporarily, and military manoeuvres of any kind, as well as the upkeep of all permanent works for mobilization are in the same way forbidden."

Article 44 of the Treaty of Versailles says: "In case Germany violates in any manner whatever the provisions of Articles 42 and 43 she shall be regarded as committing a hostile act against the Powers signatory of the present Treaty and as calculated to disturb the peace of the world."

ACTION AGAINST AGGRESSOR. The action envisaged under the Treaty of Locarno to deal with Germany's violation of the

demilitarized zone clauses (42 and 43) of the Treaty of Versailles is as follows—

1. The League Council will be called.

2. As soon as the Council is satisfied that a violation has been committed it will notify the signatories, who are pledged to come to the assistance of the Power against whom the violation is directed—in this case presumably France.

3. Any of the other signatories may come immediately to the help of the injured party if it decides that immediate action is necessary. However, if such signatory engages in hostilities it agrees to abide by the subsequent findings of the Council of the League, provided this is concurred in by the other signatories which have not gone to war.

BRITISH DOMINIONS EXEMPT. By Article 8 the only legal way of altering or abrogating the Locarno Treaty is for the Council of the League, on the request of one of the signatories, to vote by a two-thirds majority that the treaty shall cease to have effect one year from the date of the vote. Such a request to the Council must be notified to the other signatories three months in advance

By Article 9 the British Dominions and India are exempted from any obligation under the Treaty unless the Governments thereof signify their acceptance.

By a unanimous vote on 19th March, 1936, the League of Nations Council pronounced Germany guilty of infringing the Versailles and Locarno Treaties by sending troops into the Rhineland. Germany's dissentient vote did not count in calculating unanimity, she being a party to the dispute. Chile abstained.

When the result was announced, Herr von Ribbentrop, on behalf of Germany, made a formal protest against the resolution which, he said, would not be maintained in the judgment of history

M. Flandin, the French Foreign Minister, retorted sharply that no one could be a judge in his own case.

The morning session was taken up by a statement of Germany's case, clearly and ably put by Herr von Ribbentrop, whose main contention was that the Franco-Soviet Pact was incompatible with the Locarno Treaty.

Great Britain, France, Belgium, and Italy on 19th March, 1936, agreed on far-reaching proposals for a settlement of the European crisis.

The proposals cover three periods. The first is the period relating to the question of the breach of the Treaty of Locarno. The second is the difficult interim period between now and the opening of negotiations. For this interim period temporary arrangements are proposed. They include an invitation to Germany to lay her case before the Hague Court.

Provisional arrangements are suggested for the Rhineland zone before negotiations begin. France has withdrawn the condition that there should be no negotiations before withdrawal of German troops from the Rhineland.

An international conference, summoned by the League, for the discussion of the German proposals is proposed with the agreement of France and Belgium. This conference, which would probably be held in two or three months, would discuss not only Herr Hitler's plans, but the limitation of armaments and possibly economic questions. Further, the four Locarno Powers propose to submit to the League Council a series of resolutions, the first of which would be a reaffirmation of what was said about the sanctity of treaties at Stresa. The second would deal with the reference to the Hague Court for decision of the question of the relation of the Franco-Soviet pact to the Locarno Treaty, and the third would request the League Council to take note of the various proposals which the Locarno Powers put forward in their text. The proposals, which were approved by the British and French Cabinets, were communicated to Herr von Ribbentrop by Mr. Eden.

On 20th March, 1936, the text of proposals drawn up by the representatives of Belgium, France, Great Britain and Italy in relation to Germany and the Treaty of Locarno was issued as a White Paper. It included an undertaking forthwith to instruct their General Staff to enter into contract with a view to arranging the technical conditions in which the obligations which are binding upon them should be carried out in case of unprovoked aggression. As a result, the Staff talks between Great Britain, France and Belgium began in London on 15th April, 1936.

The text of Germany's reply to the proposals of the Locarno Powers was issued 1st April, 1936.

It stated that the proposals are not an effective and fruitful basis for negotiating a true peace. Germany refused to submit her case against the Franco-Soviet Pact to the Hague Court, declared she has no intention ever of attacking France and Belgium, and terms the General Staff talks incomprehensible and even prejudicial to agreements. Practical proposals followed.

They are—

Nations taking part in the coming agreement for the securing of European peace should be completely equal.

The period up to the signing of non-aggression pacts, and thereby the guarantee of European peace, shall be limited to four months. Germany gives the assurance, conditional on a similar attitude on the part of France and Belgium, not to increase the strength of troops in the Rhineland.

During this period the troops stationed in the Rhineland will not be moved closer to the Belgian and French frontiers.

Germany proposes as a guarantor of this mutual assurance a Commission consisting of representatives of Britain and Italy and of one disinterested neutral.

Germany, Belgium, and France shall be entitled each to send one representative to this commission and shall have the right, should they think they are able, on the ground of certain events, to point to an alteration of military relations, to communicate their views to the Commission.

Germany is ready on the basis of complete reciprocity with its two western neighbours to agree to any military limitation of the Western German frontier.

Germany and the Locarno Powers will immediately, or at the latest after the French elections, enter into negotiations under the leadership of the British Government for the conclusion of a twenty-five years non-aggression pact or a security pact between France and Belgium on the one hand and Germany on the other.

Britain and Italy should act as guarantor Powers under these pacts, and Germany is willing to assume certain military obligations for assistance should they result.

The proposal for the conclusion of an air pact is repeated, and Germany indicates her willingness to include the Netherlands in the security agreements.

A voluntary agreement between Germany and France to avoid everything in the education of the youth of both nations and in all publications which might poison the relations of the two nations is suggested.

Germany is willing to invite the nations on her south-eastern and north-eastern frontiers to the conclusion of the suggested non-aggression pacts.

She is willing to enter the League of Nations immediately or after the conclusion of these treaties, and repeats her expectation that in appropriate time the questions of colonial equality and the separation of the League Covenant from the Treaty of Versailles shall be clarified.

The Note suggests that after the conclusion of the negotiations steps should be taken to bring to a halt the armaments race, and proposes a ban on the use of gas poison and incendiary bombs, the bombing of open localities, heavy tanks, and the heaviest artillery.

Further limitation of armaments should also be considered and conversations might take place on economic problems.

On 8th April, 1936, France published her Peace Plan, together with her reply to the German Note of 1st April, 1936.

The peace plan envisaged a European commission to consolidate security, proposed a truce to territorial changes for twenty-five years, an international force, and general limitation of armaments.

In the reply to Berlin, Germany is asked whether she has given up her claims to Danzig, Memel, and other territories. Herr Hitler's plan, it is stated, will only have value when it is known how Germany intends to guarantee her new undertakings.

On 8th May, 1936, the British Government addressed a Questionnaire on the points raised by the German proposals of 1st April, 1936.

Up to the time of going to press (September, 1936) no reply had been received from Germany.

Austro-German Pact, 1936

On 11th July, 1936, the text of an Austro-German Agreement was announced as follows—

(1) In accordance with statements of the Fuhrer and Reich Chancellor of 21st May, 1935, the German Reich Government recognizes the full sovereignty of the Federal State of Austria.

(2) Each of the two Governments considers the inner political developments existing in the other country, including the question of Austrian National Socialism, as an internal affair of the other country in which they will not interfere either directly or indirectly.

(3) The Austrian Federal Government will maintain its policy in general and in particular towards the German Reich always on the fundamental idea that Austria recognizes herself as a German State.

Some of the actual results of the agreement are—

1. Newspapers of both countries will be admitted again.
2. The £50 tax on Germans wishing to enter Austria will go, and there will be tourist agreements.
3. The amnesty problem will be arranged to the mutual satisfaction of both countries.
4. Both nations will be allowed to show their national emblems within the borders of the other.
5. There will be economic arrangements within the framework of the existing treaties. These will chiefly deal with barter business.

Three Power Conference, 1936

Representatives of three of the Locarno Powers, viz., Great Britain, France, and Belgium met in London on 23rd July, 1936, and the following communique was subsequently issued—

"The representatives of France, Belgium and the United Kingdom having met in London on 23rd July, 1936, mindful of the arrangement of 19th March, of the proposals of the German Chancellor of 31st March, and of those of the French Government of 8th April, have arrived at the following conclusions—

1. The main purpose to which the efforts of all European

nations must be directed is to consolidate peace by means of general settlement.

2. Such a settlement can be achieved only by the free co-operation of all the Powers concerned, and nothing would be more fatal to the hopes of such a settlement than the division, apparent or real, of Europe into opposing blocs.

3. The three Governments accordingly consider that steps should be taken to arrange a meeting of the five Locarno Powers as soon as such a meeting can conveniently be held. The first business to be undertaken should, in their opinion, be to negotiate a new agreement to take the place of the Rhine Pact of Locarno, and to resolve, through the collaboration of all concerned, the situation created by the German initiative of 7th March (the military reoccupation of Rhineland).

4. The three Governments accordingly propose to enter into communication with the German and Italian Governments with a view to obtain their participation in the meeting thus proposed.

5. If progress can be made at this meeting, other matters affecting European peace will necessarily come under discussion. In such circumstances it would be natural to look forward to the widening of the area of the discussion in such manner as to facilitate with the collaboration of the other interested Powers, the settlement of those problems the solution of which is essential to the peace of Europe."

The above was communicated to the German and Italian Governments before being issued to the world.

In September, 1936, both Germany and Italy expressed willingness to enter into discussions but not before October 1936, but that the conference should be preceded by "adequate diplomatic preparation."

CHAPTER XLVII

CONCLUSION

THE upheaval of the Great World War has left its legacy of doubt and mistrust, and in spite of the many changes at home and abroad the safety of democracy is still uncertain. Yet, amidst the chaos and bewilderment, one point has stood, and still stands, out. It should be the duty of all thoughtful citizens the world over so to act and to teach as to create and foster a mutual confidence, a faith and a trust in the conduct of men and of nations. Probably at no period in modern times has there been so much suspicion and mistrust. Capital and labour, nations and states, continents and empires, are still feeling the nerve tension of the period of the Great War. At such a time it is well for the student to look beyond the narrow confines of home and to try to catch some message of encouragement for the labours which lie beyond. Such a thought has come down the ages in the words of Benedict de Spinoza in *Tractus Theologico-Politicus*—

"*The final end of the State consists not in dominating over men, restraining them by fear, subjecting them to the will of others, but, on the contrary, in permitting each one to live in all possible security—that is to say, in preserving intact the natural right of each to live without injury to himself and others.*

"*No; I say the State has not for its end the transformation of men from reasonable beings into animals or automata; it has for its end so to act that its citizens should in security develop soul and body, and make free use of their reason. Hence the true end of the State is Liberty.*"

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INDEX

A mensa et thoro, 211
" Absolute " majority, 51
Account of public income and expenditure, 255
Accountant General (Post Office), 141
Accounting Officer, 257
Act of Parliament Commencement Act, 1793, 60
—— of Settlement, 1701, 16, 158
—— of Supremacy, 1557, 209
Acts of Indemnity, 30
—— of Union, 1707 and 1801, 16, 30, 37
Ad valorem duties, 223
Adam Smith, 222
Adjournment of House, 66
Administration, letters of, 211
—— of Justice Acts, 157, 174, 175, 203, 211, 214
Administrative functions of government, 19
—— law, 22
—— tribunal, 24
Administrator, 210
Admiralty, 307
—— actions, 195
—— Appeals, 213
——, Civil Jurisdiction, 213
——, Court of, 157
——, Criminal Jurisdiction, 212
—— droits, 213
——, High Court of, 209
Admiralty Jurisdiction—
Civil, 213
Criminal, 212
Agricultural Committees, 124
—— credits, 124
—— Holdings Act, 196
—— Land (Utilization) Act, 124
—— Mortgage Corporation, Ltd., 124
—— Marketing Acts, 125
—— Wages Board, 123
—— —— (Regulation) Act, 1924, 124
—— workers, insurance of, 110
Agriculture, Dept. of, Scotland, 123
—— and Fisheries, Ministry of, 122
——, definition, 122
Aids, 221
Air Council, 311
—— Force Services, expenses of, 236
Air mails, 144
—— Ministry, 311
——, Secretary of State for, 311
—— Transport, 311
Áireacht, 289
Aliens, 83
Alternative vote, 51
Althing, 29
Ambassadors, 304
Anarchy, 11
Anglo-French Treaty, 1919, 30
—— —— Communiqué, 1935, 329
Annuities, Post Office, 141
——, expenses of, 236
Appeal—
Civil cases, 215
Court of, 158, 214
Criminal, 170
Ground of, 215
Judge of Court of, 158
Lord Justices of, 159
to House of Lords, 215
Appeals, 214
——, Admiralty, 213
—— from Colonies, 219
—— from County Court, 197
—— procedure, House of Lords, 215
Appellate Jurisdiction, 158, 181, 214
—— —— Act, 1876, 37, 38, 159, 215
Appropriation Accounts, 257
—— Act, 255
Appropriations-in-aid, 248
Approved schools, 85
Arbitrary imprisonment, 182
Arches, Court of the, 208
Aristocracy, 10
Aristotle, 6, 13, 198
Army and Air Force (Annual) Act, 17
—— —— —— —— Annual Bill, 250
—— Council, 308
—— Discipline and Regulation Act, 308
—— services, expenses of, 236
Arraigns, Clerk of, 170, 183
Arrangement of Court, 183
Arts Unions Act, 1846, 119
Assembly of Parliament, 31
Assessable income, 226
Assize, 181
—— Circuits, 181
——, Clerk of, 183

Assize, Commissioner of, 184
——, Commissions, 182, 189
——, Court of, 181
——, Divorce, 192, 211
——, Special Commissioner, 182
Assurance Companies Act, 1909, 119
Attainder, Bill of, 166, 187
Attorney-General, 72, 159
Audit, 256
Auditor-General, 256
Austin, 14, 22, 152
Australia, Dominion of, 281
Austro-German Pact, 1936, 335
Autocracy, 10
Aviation, civil, 138

BAHAMAS, 286
Bail, 167
Ball, Hannah, 97
Ballot Act, 1872, 42, 67
Baluchistan, 302
Bank Return, 243
Bankruptcy—
 Act, 1883, 119, 205
 ——, 1914, 205
 Appeal, 206
 assigned to Chancery Division, 189
 Department, 119
 in Chancery Court, 195
 Jurisdiction, 195
 Law of, 204
 Procedure, 205
Barbados, 286
Battle, method of trial, 165
Bell, Andrew, 98
Bentham, Jeremy, 152, 312
Bermudas, 286
Betting and Lotteries Act, 86, 87
Bibliography, 339
Big Ben, 31
Bill of Attainder, 166, 187
—— of Rights, 1689, 16, 308
Bills, kinds of, 58
Bishoprics Act, 1878, 36
Bishop's Court, 210
Bismarck, 318
Black Rod, 55
Blackstone, 29
Blanesburgh Committee, 106
Blind Persons Acts, 144, 151
"Blocking Motion," 60
Blue Book, 65
Board, definition, 71
—— of Admiralty, 307
—— of Agriculture Act, 1889, 122
—— of Control, 94
—— of Customs and Excise, 243
—— of Education, 97 99,
Board of Education Departments, 99
—— of Inland Revenue, 243
Board of Trade—
 Administration, 114
 Bankruptcy, 205
 Committees, 119
 Constitution, 114
 Departments, 115
 Divisions, 115
 Functions, 115
 History, 114
 Journal, 119 [146
Board of Works and Public Buildings,
Bolshevism, 11
Booty of war, 213
Bottomry, 213
Bowles v. *Attorney-General* (1913), 251
Brethren of Trinity House, 148
Bribery at municipal elections, 196
British and Foreign Schools Society, 98
—— Broadcasting Corporation, 144
—— Constitution, principles of, 15
—— Colonial Empire, 280
—— "India," definition, 293
—— Museum, Trustee of, 240
—— national debt, 266
—— Rainfall Organization, 147
Broadcasting Committee, 144
Bryce, Viscount, 40
Budget, 250
Building of ships, 213
—— Societies Acts, 148
"Bulls," 208
Burke, Edmund, 2, 21
Burma, 299, 302
"Business Committee" (Geddes Committee), 261
—— Men's Committee (Post Office) 143
"—— Premises," qualification, 46
By-laws, 25

CABINET, 74
—— and estimates, 247
—— ministers, 75
Calendar, Assize, 183
Calendars, Gregorian and Julian, 246
Canada, Dominion of, 281
Canals, 133
Cancellation of war debts, 271
Canon law, 208
Canons of taxation, 222
Canterbury, Provincial Court of, 208
Capital levy, 269
—— Punishment, Royal Commission on, 185

Capture, exceptions to the rule of, 315
Cartel ship, 315
Case law, 155
Cattle plague, 122
Census, 94
—— of Production Office, 117
Central control, 93
—— Criminal Court, 168, 182, 213
—— Departments of State, 73
—— Electricity Board, 138
—— Government (definition), 91
—— Telegraph Office, 141
—— Valuation Committee, 94
—— Wages Board, 130
Certiorari, writ of, 186, 190
Ceylon, 286
Chairman of Committees, 61
Chancellor—
 Chancery Division, 157, 201
 Judicial Committee of the Privy Council, 159
Chancellor of the Duchy of Lancaster, 72, 206
—— —— Exchequer, 157, 242
Chancery—
 Court of, 157, 199
 Division of High Court, 157, 201
Channel Islands, 85
—— —— Courts, 159
—— —— ——, appeals from, 218
Chargé d'Affaires, 305
Charitable Trusts Act, 1853, 151
Charities, 202
Charity Commissioners, 151
Charter parties, breach of contract of, 196
Chartered companies, 287
Chequers Court, 77
Chief Constable, 82
—— Pilotage Authority, 148
Children Act, 1908, 69, 91
Children's allowance, income tax, 228
Chiltern Hundreds, 43
Choice of employment, 104
Church Courts, 208
—— Discipline Act, 1840, 209
Cinemas, Sunday, 85
Cinque Ports, 213
Circuits, 176, 181
Citizen, definition, 1
Civil aviation, 138, 311
—— cases, procedure in, 171
—— Contingencies Fund, 250
—— Jurisdiction—
 Appeals to House of Lords, 215
 Common law, 188
 Equity, 198
Civil law, 155
—— List, 221, 236
—— servant, definition of, 78
—— Service, 78
—— —— Commission, 79, 150
—— —— Superannuation, 80
Clearing Office for Enemy Debts, 119
Clergy Discipline Act, 1892, 209
Clerical, etc., Society v. *Carter*, 69
Clerk of Arraigns, 170, 183
—— Assize, 183
—— of the Peace, 82
——, Justices, 82
—— to the House of Commons, 54
Closure, 60
Coal Mines Acts, 84, 120, 196
Code Napoleon, 154
Codes, 154
Codification of income tax law, 230–[234
Coke, Sir Edward, 29
Colombian flag, 314
Colonial Courts, 159
—— Laws Validity Act, 1865, 281
—— Office, 280, 285
—— —— Conferences, 287
Colonies—
 Appeals, 219
 Crown, 285
 Self-governing, 281
Colony, definition, 281
Colwyn Committee, reports of, 268
Commencement of Act, 60
Commercial attaché, 305
—— courts, 192
Commission—
 Nisi Prius, 182
 of Gaol Delivery, 182
 of Oyer and Terminer, 182
 of the Peace, 179
Commissioners of Assize, 184
—— of Crown Lands, 151
—— of Woods, Forests, and Land Revenues, 243
Committee of Public Accounts, 257
—— Group, 63
—— Hybrid, 62
—— Joint, 62
—— —— Select, 62
—— of Privileges, 62
—— of Selection, 62
—— of Supply, 62, 246, 249
—— of the Whole House, 61, 249, 255
—— —— —— —— of Ways and Means, 250
—— on Dispatch of Business at Common Law, 174
—— on National Expenditure, 261, 262

Committee Select, 62
—— stage, 59
——, Standing, 61
——, Ways and Means, 62, 260
Common jury, 165
—— law, 16, 154, 188, 189
—— ——, Court of, 156, 188
—— Dispatch of Business at, 174
—— Pleas at Durham, 156
—— —— at Lancaster, 156
—— ——, Court of, 156, 189
Commons, House of, 42, 53
—— ——, qualification of members, 42
Communism, 11
Companies Act, 119
—— Department, 119
—— Registration, 235
——, Winding-up, 119
—— Winding-up Office, 119
Comptroller and Auditor-General, 256
Compurgation, 165
Conciliation Act, 1896, 102
Confederated states, 9
Confederation, 9
Congress of Vienna and Aix-la-Chapelle, 304
Conscience money, 235
Conseil d'État, 22
Consolidated Fund, 222, 236, 255
—— Fund-Bill, 61
—— —— (No. 1) Act, 250
—— —— services, 246
Constabulary, inspectors of, 82
Constituency, definition, 42
Constitution, 14
——, Federal, 9
Constitutional law, 15, 17
Constitutions, types of, 14
Construction, statutes of, 67
Consul, 305
Consultative Committee (Education), 100
—— Councils (Health), 92
Contagious Diseases (Animals) Acts, 122, 123
Contraband, 315
Control of expenditure, 264
—— of National Finance, 259
—— of persons, 83
Controller of Trading Accounts, 119
Conventional International Law, 312
Conventions, 312
Conversion of loans, 267
Coombe Hill, 78
Co-operative Societies and income tax, 230
Coronation, 32
Coroner, 160
Corporation Profits Tax, 235
Corps of Custodians, 31
Corrupt and Illegal Practices Prevention Act, 1883, 43
Costs, 173
—— in Criminal Cases, 170, 173
Cotton Manufacturing Industry (Temporary Provisions) Act, 1934, 110
—— Spinning Industry Act, 1936, 120
Council of State (India), 302
Counsel, opening speech, 168
County Court—
 Appeals from, 197
 Districts, 195
 History, 194
 Judges, 40
 Jurisdiction, 195
 Procedure, 197
County Courts Acts, 194
—— officials, 183
Court—
 Appeal, 39, 158, 214
 Arrangement of, 183
 Assize, 181
 Central Criminal, 182
 Chancery, 199
 Commercial, 192
 Common Law, 156
 County, 193
 Criminal Appeal, 170
 Divorce and Matrimonial Causes, 209
 Equity, 156
 Exchequer, 156, 199
 High Commission, 209
 of Criminal Appeal Act, 1907, 170
 of Delegates, 209, 217
 of Probate, 209
 of Record, 160, 193
 of Session (Scotland), 215
 of Summary Jurisdiction, 180
 of the Arches, 208
 Procedure in, 166
Courtney, Lord, 13, 40
Courts—
 Colonial, 159
 Commercial, 192
 Ecclesiastical, 159, 208
 Indian, 159
 Local, 193
 of Justice, expenses, 236
 of Referees, 106
Creditors, 205
Crime, definition, 177
Crimes, classification, 177
——, indictable, 177

Criminal Appeal, 170
—— information, 166
—— Jurisdiction, 181, 212
—— law, 155, 177
Cross-examination, 169
Crown, the, 32
—— agents for Colonies, 287
—— Cases Reserved, Court of, 170
—— colony, 285
——, exemption from Statutes, 33
—— lands, 151, 243
Cruising warrants, 141
Cum testamento annexo, 211
Currency and Bank Notes Act, 1928, 244
Custodians, Corps of, 31
Custom, 4
Customs, 221, 235
—— and Excise, Board of, 243
—— Duties, 221
——, Excise and Inland Revenue, expenses of, 236
Custos Rotulorum, 183
Cyprus, 286

Dail Eireann, 289
Damage, maritime, 213
Damages, 173
Danegeld, 221
Darnell's case, 182
Davey, Lord, 155
Death duties, 251
Debt, imprisonment for, 185
——, National, 265
——, reduction of, 267
——, repudiation of, 268
Debtors Act, 1869, 196
Declaration of London, 317
Decree nisi, 212
Deeds of arrangement, 119
Defence, 169, 172, 307
Delegates, High Court of, 209, 217
Democracy, 10
Department of Agriculture for Scotland, 123
—— of Commerce and Industry, 115
—— of Commercial Relations and Treaties, 115
—— of Education, 98
—— of Industrial Property, 116
—— of Industries and Manufactures, 115
—— of Overseas Trade (Development and Intelligence), 115
—— of Public Service and Administration, 117
Departmental accounts, 237
—— Committee, 57
Dependencies, 287
——, appeals from, 218
Dependent relatives, income tax allowance, 228, 229
Depressed areas, 110
Despotism, 10
Destructive Insects Acts, 122
Detention, preventive, 185
Development and Road Improvements Funds Act, 1909-1910, 150
—— Commission, 150
—— Commissioners, 134
——, stages of, 3
Dicey, 14, 15, 16, 29, 32, 74
Dictatorships, 7, 11
Digressive taxes, 224
Diplomatic service, 150, 304
Direct taxation, 223
Director of Gas Administration, 116
—— of Public Prosecutions, 166
Disarmament Conference, 328
Discharge (Bankruptcy), 206
Discovery and inspection, 172
Diseases of Animals, 122, 123
Disraeli, 16, 56, 70
Dissolution of Parliament, 66
District Trade Committees, 105
Divorce, 211
Divorce and Admiralty Causes, Court for, 156
—— at Assizes, 192, 211
Dockwra, William, 139
Dog-racing tracks, betting on, 86
Dominion Conferences, 283
—— Protectorates, 287
Dominions, 280
Downing Street, No. 10, 77, 240
Drainage and improvement of lands, 123
Driving test, 137
Droit Administratif, 22, 24
Duchy, 206
Dyestuffs Import Regulations, 254

Earned income allowance 226
East India Company, 293
Ecclesiastical Appeals, 219
—— Courts, 156, 208
—— ——, appeals from, 218
—— livings, 40
Economic Advisory Council, 76
—— legislation, 68
Economics, 2
Economy, 258
Education Act, 1870, 99
—— ——, 1936, 101

Education (Administrative Provisions) Act, 1907, 100
——, Board of, 97, 99
——, definition, 97
——, Department of, 98
——, history of, 97
Egypt, 304
Election expenses, 43
——, methods of, 42
—— of members, 42
—— of Speaker, 54
Electors, register of, 45, 48
Electric supply, 137
Electricity Commissioners, 137
Emancipation, statutes of, 67
Emergency Powers Act, 1920, 83
Empire Cotton Growing Committee, 116
—— Federation, 7, 282
—— Marketing Board, 150
—— Meat Council, 126
Employers' Liability Act, 1880, 196
Employment Exchanges, 103
Enclosure Act, 1845, 122
Endowed Schools Commissioners, 151
Enemy cargoes, 314
—— goods in neutral ship, 315
—— property, 314
—— ——, rights to, 316
—— ships, 314
English Courts in foreign countries, appeals from, 218
Equal Franchise Act, 1928, 43
Equipping of ships, 213
Equity, 198, 202
—— Court, 156
Establishment Department (Board of Trade), 119
Estate duties, 235
Estates, 202
Estimates, 247, 248
—— Committee, report of, 263
—— Excess, 248
——, Supplementary, 248
Ethical legislation, 68
Ethics, definition of, 2
Evidence, 168
Examination-in-Chief, 169
Excess Estimates, 248
—— Profits Duty, 235
Exchequer Bonds, 268
Exchequer and Audit Department, 256
—— Chamber, Court of, 156
——, Chancellor of, 240
——, Court of, 157
——, Court of, Equity Jurisdiction, 200
Excise, 221, 235
Excise duties, 221
Execution of sentence, 170
Executive functions of government,
Exemplary damages, 173
Exemption of Crown from Statutes, 33
Exemptions from income tax, 227
Exercise of pardon, 82
Expenditure, 236, 264
Experience, Acts based on, 68
Extraditional laws, 85

Factory and Workshops Acts, 83
Fascism, 11
Federal Constitution, 9
—— states, 9
Fee, etc., stamps, 235
Felonies, 178
Fenwick, Sir John, 187
Fertilizers and Feeding Stuffs Acts, 123
Feudal state, 5
Financial accounts, 255
Finance Act, 251
—— and statistics' (Ministry of Transport), 128
Finance Bill, 1909, 39
—— Department (Board of Trade), 119
——, public, 220
Financial administration, 240
—— history, 220
—— Incidence of Future Legislation, Select Committee, 260
—— Secretary to the Treasury, 242
—— Statement, 255
—— system, 220
—— year, 247
Fines, 81, 180
First-class private bills, 63
First Lord of the Admiralty, 307
—— —— of the Treasury, 75, 240
—— Reading, 59
Fisheries, 123
Fishery Board for Scotland, 123
Fishing vessels, 315
Flag, 314
Flax Control Board, 116
Flexible constitution, 14
Flying, private, 138
Food and Drugs Acts, 123
—— Council, 119
Forced loans, 265
Foreign Enlistment Act, 213
—— missions, 97
—— Office, 303
—— Powers, relations with, 85
Forestry Commission, 151

Forms of government, 10
Four-Power pact, 328
Franchise, 45
Franco-Soviet Pact, 330
Freedom of speech, 18
Friendly Societies Act, 1875, 147
—— —— ——, 1896, 196
Functions of government, 19
—— of Parliament, 29
Funded Debt, 266

Gaol Delivery, Commission of, 182, 189
Gaols, 85
Gas Administration, Director of, 116
Gas and Water Works Facilities Acts, 1870-1873, 92
—— Undertakings Act, 1934, 116
Geddes Committee, 261
General Board of Health, 91
—— Election, 1935, 50
—— Register Office, 94
Geneva Convention, 1906, 313
German occupation of Rhineland, 330
Gibraltar, 286
Gibson Bowles Act, 252
Gift coupon trading, 120
Gladstone, W. E., 225, 242, 258, 318
Glass and potash production, 116
Glebe land, 123
Goethe, 13
Gold Standard, 245, 274
Government and State, definition, 9
—— classification of, 10
——, distinction between, 10
——, forms of, 10
——, functions of, 19
—— of India Acts, 293
——, power of, 10
——, principles of, 15
—— securities, 268
——, theories of, 12
——, types of, 10
—— Whips, 241
Grand Committee, 59
—— Jury, 174
Grants-in-aid, 248
Gratian, 208
Great Seal, 34, 39, 149, 199
—— ——, Keeper of, 39
—— Western Railway, 130
Greece, 6
Greenwich Hospital, 111, 308
Gregorian Calendar, 246
Grotius, 10
Group Committees, 63
Guardianship of Infants Act, 1886, 196
Guillotine Closure, 60

Habeas Corpus Act, 183
—— writs of, 18, 190, 191
Habitual Drunkards Act, 1879, 196
Hague Conference, 1907, 318
—— Convention, 1907, 313
—— Declarations, 1899-1907, 312
Harbours, 133
Hay, James, 97
Health, Ministry of, 91
Healy, His Excellency Timothy M., K.C., 288
Hearth money, 221
Henry VIII, Clauses, 26, 27
Hereditary peers, 36
Hewart, Lord, 18
Hicks-Beach, Sir Michael, 225, 260
High Bailiffs, 184
High Commissioners, 282
—— Court, Judge of, 157
—— —— of Admiralty, 209
—— —— of Delegates, 209, 217
—— —— of Justice, 157
"—— Judicial Office," 159
—— Sheriff, 183
—— Treason, 177
Hill, Sir Rowland, 139
"His Majesty's Opposition," 56
Home Office, 81
—— Rule Bills, 1885 and 1893, 30
—— Secretary, 81
Horticultural Produce Act, 1931, 125
House of Commons, 42–44, 54
—— of Lords, 36, 54, 60, 159, 173
—— ——, advantages of, 40
—— ——, appellate jurisdiction, 214
—— ——, powers of, 38
—— ——, privileges, 38
—— ——, reform of, 40
Housekeeper allowance, income tax, 228
Hudson's Bay Company, 287
Hybrid Committee, 62

Iceland parliament, 29
Impeachment, 38, 186
Imperial Airways Ltd., 311
—— Conference, 282
—— Economic Conference, 283
—— Defence Committee, 307
—— Institute, 117
Import Duties Acts, 1932, 252
—— —— (General) Order, 1935, 254
Imports and exports licensing, 115
Imprisonment, 180
—— arbitrary, 182
—— for debt, Departmental Committee on, 185

Income—
Assessable, 226
Taxable, 226
Income tax—
Administration, 225
Appeals, 230
Assessment, 226
Children's allowance, 228
Codification, 230–234
Co-operative Societies, 230
Deductions, 226
Definition, 225
Dependent relatives allowance, 228, 229
Exemptions, 227
History, 225
Housekeeper allowance, 228
Life assurance, 229
Personal allowance, 227
Rates, 229
Reliefs, 227
Schedules, 226
Wife's earned income, 227
Increase of Rent and Mortgage Interest (Restrictions) Acts, 196
India—
Acts, 293, 299
Appeals, 218
Central Government, 298
Constitutional Reform, 296
Council of India, 301
Courts, 159, 213
Definition, 293
Joint Select Committee, 296, 297
Government of, 301
Governor-General in Council, 301
Governor's Provinces, 302
Home Government, 300
Labour commission, 297
Legislature, 301
Office, 300
Protectorate, 286
Provisional autonomy, 298
Round Table Conferences, 295, 296
Secretary of State, 300
Simon Commission, 294
Viceroy, 301
Indian National Congress, 1885, 293
—— States Committee, 295
Indictable crimes, 177
Indictment, 167
Indirect taxation, 223
Industrial and approved schools, 85
—— Assurance Acts, 148, 196
—— —— Commissioner, 148
—— Inquiries Office, 117
—— laws, administration of, 83
—— museum, 83
Industrial Relations Division, 104
—— Transference Board, 104
—— welfare, promotion of, 20
Infants, 202
Influence, spheres of, 287
Information, criminal, 166
Inhabited House Duty, 221
Inland Revenue, Board of, 243
—— —— duty, 222, 235
—— Waterways, Committee on, 133
Inspectorate (Education), 100
Inspectors of Taxes, 225
—— of constabulary, 82
Institutions, Inspection of, 85
Insurance Commissioners, 91
—— Department, 93
Intelligence and Parliamentary Department, 117
Interest, right to recover, 163
Interlocutory applications, 172
International Court of Arbitration, 318
—— indebtedness, 271
—— Labour Conference, 320
—— —— Division, 104
—— —— Office, 321
—— law, 312
—— ——, conventional, 312
—— ——, natural, 312
—— Prize Court, 316
Interpretation of Statutes, 69
Interpretation Act, 1889, 45, 280
Irak, 287
Ireland, 88
——, Representative Peers, 37
Irish Church Act, 1869, 30
—— Councils Bill, 1897, 30
—— Free State Act, 31
—— —— —— (Agreement) Act, 1922, 31, 288
—— —— —— Trade Agreement, 292
—— Office, 88
Isle of Man, 85
—— ——, appeals from, 218
—— ——, Courts, 159

JAMAICA, 286
Joint Committee (Parliament), 62
—— Electrical Authority, 137
—— Roads Committee, 134
—— Select Committee, 62
—— Stock Companies, 243
—— —— Companies' Registry Office, 119
Judges, 158, 171, 176
Judge's marshal, 183
Judgment, 173

Judicature Acts—
Appeals from County Court, 197
Appellate jurisdiction, 215
Common Law and Equity, 201
King's Bench Division, 189
Probate, Divorce and Admiralty Division, 209
Purposes, 156
Judicial Committee Act, 1915, 218
—— —— of Privy Council—
Appellate jurisdiction 217
Constitution, 156, 217
Judgments, 173
Jurisdiction, 218
President, 39
Prize appeals, 213
Procedure, 218
Judicial decisions, 27
—— functions of government, 20
Judicial powers of House of Lords, 38
—— Proceedings (Regulation of Reports) Act, 1926, 167
—— system, 152
Julian calendar, 246
Juries—
——, common, 175
——, grand, 174
——, petty, 175
——, special, 175
——, trial by, 165
Jurisdiction—
Appellate, 158, 181
Civil, 171, 188
Criminal, 181
Ministerial, 181
Jurisprudence, 2
Justice of the Peace—
Appointment, 179
Bankrupts, 206
Ex-officio, 179
Nominator, 40

"KANGAROO," closure, 60
Kant, 318
Keeper of the Great Seal, 39, 199
Kellogg Pact, 326
Kenny, 177
Kenya Colony, 287
King, The, 29
King v. *The Ministry of Health*, 28
King's Bench Division, 157, 158
—— —— ——, Civil jurisdiction, 189
—— —— ——, Court of, 156
—— —— ——, Criminal jurisdiction, 181
King's Peace, maintenance of, 82
King's Printer of Acts of Parliament, 147
—— Proctor, 211, 241
—— Speech, 54

LABOUR Conference, International, 320
—— Exchanges, 67, 103
——, Ministry of, 102
Lancaster, Chancellor of the Duchy of, 72, 201, 206
——, Joseph, 98
——, Vice-Chancellor of the County Palatine, 207
Land Commissioners, 122
—— Revenues, 243
—— Tax, 221, 235
Lansdowne, Lord, 36
Laski, Professor H J., 18, 79
Law—
Administrative, 22
Case Law, 155
Civil Law, 155
Classification of, 154
Common Law, 154, 188
Courts Procedure, Committee on, 162
Criminal Law, 155
Definition, 152
History, 152
International, 312
Merchant, 192
Officers, 159
Reports, 155
Rule of, 16
Sittings, 160
Statute Law, 154
Law and justice, expenses of, 236
—— merchant, 192
—— of Distress Amendment Act 1856, 196
—— of Property, 203
—— reform, 163
—— wager, 165
League of Nations—
Assembly, 320
Council, 320
Covenant, 319
Mandatory Territory, 287, 321
Objects, 318
Organs, 320
Original members, 319
Proposals, 318
Secretariat, 320
States invited to accede to Covenant, 319
Lee, Lord, of Fareham, 77
Legal Education, Committee on, 161

Legal language, 161
Legislation, principles of, 67
——, process of, 58
Legislative Council of the Isle of Man, 36
—— functions of government, 19
Legislative powers of House of Lords, 39
Letter of Credence, 304
Letters of Administration, 211
Licensing, Acts, 196
——, Royal Commission on, 86, 88
Lighthouse authority, 148
Lloyd George, D, 225
Loan Societies Act, 148
Loans—
 Forced, 265
 Local, 266
 Public, 265
 Voluntary, 265
Local Acts, 69
—— Advisory Committees, 143
—— Courts of Record, 193
—— Government Board, 91
—— ——, definition, 91
—— —— Officers, training and recruitment, 95
—— Legislation Committee, 61
—— loans, 266
—— Taxation Licences, 140
—— Unemployment Index, 102
—— War Pensions Committees, 112
Locarno, Treaty of, 331–335
London & North Eastern Railway, 130
—— and Home Counties Traffic Advisory Committee, 135
—— Bankruptcy Court, 156, 204
——, Declaration of, 318
—— *Gazette*, 147
—— Government Act, 1899, 69
—— Judicial Work, 206
—— Midland & Scottish Railway, 130
—— Naval Treaty, 1936, 331
—— Passenger Transport Act, 1933, 136
——, Treaty of, 327
Long Room, 243
Lord-Advocate, 88
—— Brougham's Act, 204
—— Chancellor—
 Court of Appeal, 158
 Duties, 39
 Election of Speaker, 54, 55
 Great Seal, 34
 House of Lords, 39
 Judicial Committee of Privy Council, 159
Lord Chief Justice, 158
—— High Admiral, 213, 307
—— —— Chancellor, 39, 199
—— —— Steward, 186
—— —— Treasurer, 240
—— -Lieutenant of the County, 179, 183
—— President of the Council, 34
—— Privy Seal, 149
Lords Committee on Foreign Affairs, 303
——, House of, *see* HOUSE OF LORDS
—— Justices of Appeal, 159
—— of Appeal in Ordinary, 37, 38, 158, 215
—— Spiritual, 36
—— Temporal, 36
Lotteries and Betting, Act, 86
Lowe, Right Hon. Robert, 98
Lowell, 34
Lunacy, 92
Lunacy Acts, 69, 94
—— Commission, 94

MADRAS, 302
Main roads, State control of, 135
Magna Carta, 17, 182, 190
Magnum Concilium, 36
Malcolm Committee, 101
Mandamus, writ of, 190
Mandatory territory, 287, 321
Mann v. *Edinburgh Corporation*, 64
Manor of Northstead, 43
Mansfield, Lord, 192
Marine cases, 148
—— Consultative Branch, 117
—— Survey Staff, 118
Married women, 202
Martial law, 177
Master of the Crown Office, 166
—— of the Mint, 244
—— of the Rolls, 159, 201, 214
Matrimonial Causes Act, 1860, 212
Mauritius, 286
Maxims of Equity, 202
May Committee, 262
May, Sir Erskine, 66, 247
Medical Officer of Health, 68
Melville, Lord, 186
Mental defectives, 94
—— Deficiency Act, 1913, 94
Mercantile Law Amendment Act, 1856, 196
—— Marine Department, 117
Merchandise Marks Act, 123
Merchant Shipping Act, 1894, 69, 213
Mesopotamia, 287

Meteorological Office, 147
Methods of Election, 42
Metropolitan Police Act, 1933, 82
—— Police Force, 82
Midwives Acts, 1902-1918, 91
Military or Naval Voter, 47
—— Service Acts, 310
Milk Act, 1934, 127
—— Marketing Board, 126
Mineral Resources Development Department, 116
Mines Department, 120
—— Regulation Acts, 69
——, Secretary for, 120
Mining Industry Acts, 120
Minister, 71
——, Diplomatic Service, 305
Ministers, powers of, 26
——, salaries of, 72
Ministerial jurisdiction, 181
—— responsibility, 34
Ministry, 71
—— of Agriculture and Fisheries, 122
Ministry of, Health, 91
—— ——, Departments, 91
—— —— (Registration and Elections, Transfer of Powers) Order, 1921, 83
—— of Labour, 102
—— ——, Departments, 102
—— —— *Gazette*, 102
—— of Pensions, 111
—— —— Act, 1916, 111
—— of Transport, 128
—— —— Act, 1919, 128
—— ——, Departments, 128
Minorities, representation of, 49
Mint, 244
——, Master of, 244
Minto-Morley reforms, 293
Misdemeanours, 178
Money Bill, 17, 39, 41, 260
—— Order Department, 141
—— Payment Act, 185
Montagu-Chelmsford Report, 293
Motor Vehicle Duties, 235
Movables, 221
M.P.'s, payment of, 43
—— qualification, 42
——, resignation of, 43
——, travelling expenses, 43
Municipal Corporations Act, 1835, 192
Mutiny Act, 308

NATION, definition, 1
Nation-State, 5
National Assembly of the Church of England, 53
National Debt, 236, 265, 266, 268, 270
—— —— Commissioners, 242, 266
—— ——, Principal Commissioner for the Reduction of, 242
—— defence, 307
—— Expenditure, Select Committee on, 258
—— Finance, control of, 255, 259
—— Gallery, Trustee of, 240
—— indebtedness, 265
—— Insurance Act, 1911, 105
—— —— Stamps, 140
—— Health Insurance Acts, 148
—— —— ——, expenses of, 236
—— Physical Laboratory, 117
—— Savings Certificates and Stamps, 140, 267
—— Union of Railwaymen, 130
—— Wages Board, 130
Natural International Law, 312
—— Family, 3
—— Laws, enforcement of, 68
Naturalization of Aliens Act, 83
Nautical Assessors, 148
Naval and Military Separation Allowances and Pensions, 140
—— and War Pensions, etc., 111, 112
—— Conference, Five-Power, 327
—— or Military Voter, 47
Navy services, expenses of, 236
Neutral goods in enemy ships, 315
—— prizes, sinking of, 316
Newfoundland, 285
New Accounting system, 237
New Ministries and Secretaries Act, 1916, 102
Newspaper competitions, 87
—— registration, 235
Newspapers, 243
Nigeria, 287
Nisi Prius, 157, 182
—— ——, Commission of, 157
Non-tax revenue, 235
Northern Ireland, 89
Northstead, Manor of, 43
North-West Frontier Province, 295

OATHS, 165
Objects of punishment, 185
Obligatory functions of Government, 19
Observatories, 147
Odgers, 18
Office of His Majesty's Public Works and Buildings, 146
—— of Woods and Forests, 146
—— of Works, 146
Official Assignees, 204

Official Receiver, 119, 205
Officers of House of Commons, 44
Oireachtas, 289
Old Age Pensions Acts, 67, 93
—— —— ——, expenses of, 236
Oligarchy, 10
Omnibus Bill, 63
Onerous taxes, 224
Open Spaces Act, 1875, 196
Opening of Parliament, 54
—— speech by counsel, 168
Opposition, His Majesty's, 56
Optional functions of government, 19, 20
Ordeal, trial by, 165
Order in Council, 34
Ordinary closure, 60
Ordnance survey, 124, 127
"Other House," 60
Ottawa Conference, 284
Overseas Settlement Board, 285
——, students from, 101
Orissa, 302
Oyer and Terminer, Commission of, 182, 189

PALATINATE, 207
Palestine, 287
Pardon, 170
——, exercise of, 82
Paris, Declaration of, 1856, 313, 315
Parks, 146
Parliament—
 Assembly of, 31
 Functions of, 29
 History of, 31
 Houses of, 31
 Limitation of the power of, 30
 Power of, 29
 Procedure, 54
 Sovereignty of, 16
Parliament Act, 1911, 30, 39, 41, 42
Parliamentary Committees, 61
—— electorate, 46
—— franchise, 45
—— hours, 56
—— procedure, 54
—— time-table, 56
Partnerships, 202
Party, definition, 2
——power, 50
Patent Office, 116
Patents, 235
Paymaster-General, 243
Payment of M.P.'s, 43
Peace, League of, 318
Peculiars, 210
Peel, Sir Robert, 76, 225
Peers—
 Hereditary, 36
 Representative Peers for Ireland, 37
—— —— for Scotland, 37
——, trial by, 186
Penn, William, 318
Penny postage, 139
Pensions, expenses of, 236
——, Ministry of—
 Central administration, 112
 Constitution, 111
 Powers and duties, 111
——, political, 78
Permanent Court of International Justice, 321
Personal allowance, income tax, 227
—— liberty, right of, 18
—— Rights of the Crown, 34
"Petit Treason," 177
Petition of Right, 183
Petitions, 43, 58, 65, 81
Petroleum, 81, 121
Petty juries, 175
—— Sessions, 180
Pitt, William, 222, 225
Place Bill, 1707, 139
—— of trial, 167, 171
Plea Rolls, 154
Pleadings, 172
Police Force, 179
—— grant, 82
Political Offices Pensions Act, 1869, 78
Political pensions, 78
—— states, 5
—— theory, 2
Politics, definition, 2
Poll tax, 221
Poor Law Amendment Act, 1834, 67
—— —— Board, 91
—— Persons' Rules, 192
—— Prisoners' Defence Act, 1930, [169
Pope, 208
Port of London Act, 1908, 69
Postal correspondence, 315
—— orders, 141
Postmaster-General, 139
Post Office, 139, 235
—— —— Board, 139
—— —— Fund, 143
—— —— personnel department, 141
—— —— reform, 142
—— ——, Savings Bank, 141, 148
—— —— services, expenses of, 236
Power of government, 10
—— of House of Lords, 38
—— of Parliament, 29
Preamble of a Bill, 58
Prerogative of the Crown, 32

Prerogative Courts, 210
Preventive detention, 185
Prime Minister, 54, 72, 76
Principles of government, 15
—— of legislation, 67
—— of taxation, 224
Prison Commission, 81
Private Bill, 58, 63
—— flying, 138
—— Legislation Procedure (Scotland) Act, 1899, 64
—— Member's Bill, 58, 63
Privilege, jurisdiction in cases of, 216
Privileges, Committee of, 62
—— of House of Lords, 38
Privy Council, 54, 72
—— ——, Judicial Committee of, *see* JUDICIAL COMMITTEE OF PRIVY COUNCIL
Prize, 316
—— Court, International, 316
——, distribution of, 316
—— jurisdiction, 213
Probate, 210
—— Act, 1857, 210
Probate, Court of, 157, 210
Probate, Divorce and Admiralty Division, 156, 209, 210
—— jurisdiction, 195
Probation, 185
—— Advisory Committee, 83
Procedendo, writ of, 190
Procedure—
Civil, 171
County Court, 197
Criminal, 166, 168
in Court, 166
Proclamation, 34
Proctor, King's, 211, 241
Procurator Fiscal, 165
Progressive taxes, 224
Prohibition, writ of, 190
Promotion of social and industrial welfare, 20
Property tax, 235
——, law of, 203
Proportional representation, 52
—— taxes, 224
Prorogation of Parliament, 66
Prosecution, 165
Protection of persons, 69
Protectorates, 286, 304
Provincial Court of Canterbury, 208
Provisional Collection of Taxes Act, 1913, 251
—— Orders, 64
Proxies (House of Lords), 37
Public Accounts, Committee of, 257
—— assistance administration, 93
—— Bill, 41, 58, 59
—— buildings, 146
—— examination (Bankruptcy), 205
—— expenditure, 236, 246
—— finance, 235
—— ——, classification of, 235
—— Health Act, 67
—— —— Administration, 92
—— Inquiries, 57
—— loans, 265
—— meeting, right of, 178
—— Prosecutions, Director of, 166
—— Relations Officer, 141
—— Trustee, 148
—— —— Act, 1906, 148
—— utility provisions, 20
—— Works Loan Board, 244
—— Worship Regulation Act, 208
Puisne judges, 40, 158
Punishment, objects of, 185

QUALIFICATION of Members of House of Commons, 42
"Qualifying Period," 48
Quarter Sessions, 181
Quasi-treaties, 16
Quorum (House of Lords), 38
—— (House of Commons), 61
—— (Privy Council), 74
Quo Warranto, writ of, 190

RACECOURSE Betting Control Board, 83
Raikes, Robert, 97
Railway accidents, 132
—— Accounts, 132
—— and Canal Commission, 131
—— companies, 130
—— executive, 128
—— groups, 130
Railway passenger duty, 132
—— Rates Tribunal, 131 [131
—— (Road Transport) Acts, 1928,
Railways Act, 1921, 129
Rates Advisory Committee, 128, 130
—— of income tax, 229
Receiving Order in Bankruptcy, 205
Record, Local Courts of, 193
Recorder, 181
Recruitment of Local Government officers, 95
Reduction of Debt, 267, 270
Re-election of Ministers Act, 71
Re-examination, 169
Referees, Courts of, 106
Referendum, 289

Reformation, 210
Regency Act, 1910, 30
Register of Electors, 45
—— of Writs, 154
Registrar-General, 94
—— of Shipping and Seafnen, 118
Registration and Elections, 83
—— of Business Names Act, 1916, 119
Registry of Friendly Societies, 147
Regressive taxes, 224
Regulating Act, 1773, 293
Rejection of Bill, 60
Reorganization of Offices (Scotland) Act, 1928, 88
Repairing ships, 213
Reparation claims, 119
Repeal of Statute Law, 64
Replevin, 196
Report stage, 60
Representation of the People Acts, 43, 45, 46, 48
Representative peers, 37
Reprieve, 170
Repudiation, 268
Residence qualification, 46
Resignation of M.P., 43
Revenue, 235
—— departments, 247
——, methods of raising, 246
Right to recover interest, 163
Rigid constitution, 14
Road and Rail Traffic Acts, 136
—— Board, 134
—— Fund, 135
—— Safety, Committee on, 137
—— Transport (Railways), 131
Roads Act, 1920, 135
—— Committee, 134
—— Department, 128, 134
Roberts v. *Hopwood and others*, 94
Rosebery, Lord, 40
Round Table Conference, 295
Rousseau, 318
Royal Assent, 60
—— Botanical Gardens, Kew, 124
—— and Parliamentary Titles Act, 1927, 32
—— Commission, appointment of, 57
—— —— on Transport, 136
—— —— on Licensing Laws of Scotland, 88
—— Mint, 244
—— Naval Reserve, 307
—— Navy, 307
—— parks, 146
—— prerogative, 33
—— Society of Teachers, 100
Royal will, expression of, 34
Rule of law, 16
Russell, Earl, 186

SAFEGUARDING the public, 83
St. Helena, 286
St Petersburg, Declaration of, 1868, 312
Saint-Pierre, Abbé of, 318
Salaries, 236
—— of Ministers, 72
Salvage, 196, 213
Sanctions, operation of, 322–325
Savings Bank Department, 141
School Boards, 99
Schools, inspection of, 100
Scientific and Industrial Research, Committee of Privy Council on, 117
—— instruments, 116
—— Societies Act, 148
Scotland—
 Appeal in, 215
 Indictment in, 167
 Procedure in, 165, 166, 215
 Representative Peers, 37
 Secretary for, 87
Scottish Committee, 62
—— Office, 87
Sea Fishing Industry Acts, 126
Seal, Great, in Scotland, 87
Seanad Eireann, 289
Second Ballot, 51
—— Chambers, 40
—— Class Private Bills, 63
—— reading, 59
Secretarial Department (Ministry of Transport), 128
Secretaries of State, 81
Secretary for Mines, 120
—— for Scotland, 87
—— of State for Foreign Affairs, 303
—— —— for India, 300
—— —— for War, 308
Select Committee, 62
—— —— on Financial Incidence of Future Legislation, 260
—— —— on National Expenditure, 258
—— —— on Parliamentary hours, 56
Selection Committee, 62
Self-governing Dominions, 281, 291
Self-government, 13
Sentence, 170
Septennial Act, 1716, 30, 41
Sequential laws, 68

Sergeant-at-Arms, 54, 55
Settled Land Acts, 196
Sex Disqualification Removal Act, 1919, 42, 179
Shaftesbury Advisory Committee, 101
Sheriff, High, 183
——, Under, 183
Shipping Assistance Act, 1934, 118
Ships, cases referring to building, equipping, and repairing, 213
Shipwrecked vessels, 315
Shop Clubs Act, 148
Shops Act, 1934, 84
Sick soldiers, 91
Sign Manual, 34
Simon Commission, 294
Sinking Fund, 236, 251, 267
Sittings, Law, 160
——, suspension of, 66
Slaughter-house reform, 126
Small holdings and allotments, 123
Social and industrial welfare, promotion of, 20
—— institutions, 3
—— legislation, 68
—— reform, statutes of, 67
—— sciences, 2
—— services in Courts of Summary Jurisdiction, 180
Society for Promoting Christian Knowledge, 97
Sociology, 3
Solemn Agreements, 16
Solicitor-General, 159
—— (Scotland), 88
Solicitor's Department (Board of Trade), 119
South Africa, appeals from, 218
Southern Railway, 130
—— Rhodesia, 285
Sovereign power, 10
Sovereignty, 10
—— of Parliament, 16
Speaker of House of Commons, 54
Special Areas, 110
—— Commissioner of Assize, 184
—— juries, 175
—— Order, 65
Specific duties, 223
Speech, freedom of, 18
Speed limit, 136
Spending departments, 247
Spheres of influence, 287
Stamps, 235
Standards Division, 116
Standing Committee, 61
—— orders, 56
Star Chamber, 34, 216
State and Government, distinctions, 9
State, definition, 1
—— opening of Parliament, 54
——, Secretaries of, 81
Statement of Affairs, 205
—— of Claim, 172
States, types of, 9
Stationery Office, 146
Statistics Department, 117
Statute Law, 64, 154
—— of Distribution, 1670, 210
—— of Westminster, 1931, 282
Statutes, 16, 67
Statuto, 14
Statutory jurisdiction, 202
—— Courts, 209
—— Rules, Orders and Regulations, 65
Steward, Lord High, 186
Stipendiary magistrates, 82, 180
Stock, government, 141
Stockdale v. *Hansard*, 252
Students from overseas, 101
Subpoena, 200
Suez Canal, 235
Sugar Commission, 124
Sully, Duc de, 318
Summary jurisdiction, 180
—— Jurisdiction Act, 1875, 180
Summing-up, 170
Sunday cinemas, 85
Superintendent Registrar, 94
Supplementary Estimates, 248
Supply, Committee of, 62, 249
—— Services, 236, 246
Supreme Court of Judicature, 156
—— —— —— Act, 1925, 157
Surtax, 235, 269
Surveyor of His Majesty's Works and Public Buildings, 146
Suspension of sittings, 66
Sweepstakes, 86

TARIFFS, 253
Tax, Income, 224
—— revenue, 235
Taxable income, 226
Taxation—
 Canons of, 222
 Classification of, 223
 Direct, 223
 Indirect, 223
 Principles of, 224
Taxes—
 Digressive, 224
 Direct, 223
 Indirect, 223
 Onerous, 224

Taxes (*contd.*)—
Progressive, 224
Proportional, 224
Regressive, 224
Taxing Master, 173
Teachers Registration Council, 100
Telegraph, 235
Telephones, 140, 235
Television, 145
Temporal Lords, 36
Ten Minutes Rule, 59
Terms, Law, 160
Territorial and Reserve Forces Act, 1907, 310
—— Force, 310
—— functions of Home Secretary, 85
Third Reading, 59
Three Estates, 29
—— -Power Conference, 1936, 335
Time table, Parliamentary, 56
Timocracy, 10
Tithe Copyhold and Enclosure Acts, 123
Tithes, 122, 127
——, Commission on, 127
Titles Act, 1891, 196
Totalisator, 86
Totems, 4
Towage, 196, 213
Town Clerk, 165
Toynbee, 20
Trade, Board of, *see* BOARD OF TRADE
—— Boards, 104
—— —— Act, 1909, 102
—— —— Acts, 1909 and 1918, 104
—— —— Provisional Order Confirmation Acts, 1913, 105
—— marks, 116
—— Union Acts, 148
Training and recruitment of Local Government officers, 95
Tramp Shipping Subsidy Advisory Committee, 118
Tramways, 133
Transport, Ministry of, 128
——, Royal Commission on, 136
Travellers' cheques (Post Office), 141
Travelling expenses of M.P.'s, 43
Treason Act, 1351, 177
Treasure trove, 160
Treasury, 240
—— Bills, 265, 268
—— Counsel to the Crown, 166
—— Chest Fund, 250
——, First Lord of, 240
Treaty of London, 327
—— of Peace, 1919, 303
Trial by Peers, 186
——, methods of, 165
——, place of, 167, 171
Tribal groups, 4
Tribunals of Inquiry (Evidence) Act, 1921, 167
Triennial Act, 1694, 30
Trinity House, 148
Trustee Savings Banks Acts, 148
Trustees, 205
Trusts, 202
Tuke, Sir Brian, 139
Types of states, 9
Tyranny, 10

UGANDA, 287
Umpire (Unemployment), 106
Under Bailiff, 184
—— Sheriff, 184
—— Treasurer, 242
Unemployment Act, 1935, 108
—— Assistance Regulations, 109
—— Grants Committee, 109
—— Insurance, 105
Unfunded debt, 268
Union of South Africa, 281
—— —— ——, appeals from, 218
Unitary states, 9
United provinces, 302
Universal state, 6
University constituencies, 47
Unopposed Committee, 63
"Uses," 201

VENUE, 167
——, civil jurisdiction, 171
Verdict, 170, 173
Voluntary loans, 265
Vote in Supply, 236
Voting at elections, 48

WALPOLE, Sir Robert, 76
War, 313
War Cabinet, 74, 75
—— Charities Act, 1916, 151
——, commencement of, 313
—— debts, cancellation of, 271
—— Office, 308
——, outlawry of, 326
—— Pensions Acts, 111, 112
——, Secretary of State for, 308
Wards, 202
Washington Naval Treaty, 328
Water Supply Survey, 95
Ways and Communications Bill, 128
—— and Means, Committee, 62, 250

Wealth of Nations, 222
Weights and Measures, 116
Welsh Insurance Commissioners, 91
Wesley, John, 97
Western Australia, 285
Wheat Act, 1933, 126
Whips, 241
White Paper, 65
Whitefield, 97
Whitehall, 80
Whitley Councils, 80
Whole House, Committee of the, 62, 249, 255
Wife's earned income, 227
Williams, Bishop, 200
Willoughby de Broke, Lord, 15
Wireless Telegraphy (Blind Persons Facilities) Act, 1926, 144
Witnesses, examination of, 169
——, trial by, 165
Women in Diplomatic Service, 305
Woods, Forests and Land Revenue, Commissioners of, 243
—— and Forests, Office of, 146
Workmen's Compensation Acts, 84, 148, 196
World Economic Conference, 272
Writs, 172, 190
——, *Habeas Corpus*, 186, 190, 191
—— (Parliamentary elections), 42

YOUNG persons, employment of, 84

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CONTENTS

	PAGE
ADVERTISING AND COMMERCIAL ART	20–21
ARITHMETIC, ETC.	2
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